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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 894. No 23

HENRY L. MITCHELL, GOVERNOR OF THE STATE OF FLORIDA, WILLIAM D. BLOXHAM, COMPTROLLER OF THE STATE OF FLORIDA, ET AL., APPELLANTS,

vs.

CHARLES M. FURMAN, ADMINISTRATOR OF CHARLES M. FURMAN, DECEASED, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED [illegible]
[illegible]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 604.

HENRY L. MITCHELL, GOVERNOR OF THE STATE OF FLORIDA, WILLIAM D. BLOXHAM, COMPTROLLER OF THE STATE OF FLORIDA, ET AL., APPELLANTS,

vs.

CHARLES M. FURMAN, ADMINISTRATOR OF CHARLES M. FURMAN, DECEASED, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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1 In the United States circuit court for the fifth circuit, southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHELL, GOVERNOR, ET ALS.

Amended bill of complaint.

To the judges of the circuit court of the United States for the southern district of Florida:

Charles M. Furman, of Clemson College, in the State of South Carolina, in his own right and as administrator de bonis non cum testamento of the estate of Charles M. Furman, late of Charleston, South Carolina, deceased; Bolivar B. Furman, of Summerville, in the State of South Carolina; and Alester G. Furman, of Greenville, in the State of South Carolina, all of whom are citizens of said State of South Carolina, bring this their amended bill against Henry L. Mitchell, governor of the State of Florida; William D. Bloxham, comptroller of the State of Florida; Charles B. Collins, treasurer of the State of Florida; William B. Lamar, attorney-general of the State of Florida, and Lucius B. Wombwell, commissioner of agriculture of said State of Florida, all residing in Tallahassee, in said State, and citizens of said State of Florida, as the board of trustees of the Internal Improvement Fund of the State of Florida; The Florida Coast Line Canal and Transportation Company, a corporation organized and incorporated under the laws of the State of Florida, having its principal place of business in St. Augustine, Florida, and a citizen of said State of Florida; The St. Johns Railway Company, a corporation organized and incorporated under the laws of the State of Florida, having its principal place of business in Jacksonville,
2 Florida, and a citizen of said State of Florida; Horace S. Cummings, residing in the city of Washington, District of Columbia; and John A. Henderson, of Tallahassee, Florida, and a citizen of said State of Florida; and thereupon your orators complain and say:

That they own and hold title in fee simple, as tenants in common, to all that tract, parcel, or piece of land lying, situate, and being in the county of St. Johns and State of Florida and within township seven, eight, and nine south, of range thirty east, known as "Anastasia," or "Saint Anastasia," Island, said to contain ten thousand acres, but which in fact contains about seven thousand five hundred acres, excepting therefrom what was known at the time of the Spanish grant, hereinafter mentioned, as the King's Quarries, the bound'ries of which were marked by stakes, the same being about two hundred acres lying on and east of the old King's road, between the same and the old light-house, which exception does not embrace the lands, or any part thereof, hereinafter alleged to be claimed by the defendants or any of them.

Your orators further show unto your honors that the said tract of land was granted by the Government of Spain to José, or Joseph, Fish—otherwise known as Jesse Fish—(hereinafter designated as Joseph Fish), on or about the 19th day of June, A. D. 1795, which said grant was ratified and confirmed by the United States by the treaty with Spain ratified by the United States on the 19th day of February, A. D. 1821.

Your orators further show unto your honors that they derive title to the said Anastasia Island from the said Joseph Fish, as follows, to wit: The said Joseph Fish died intestate, unmarried, and without issue, during or about the year 1798, leaving surviving him as his only heir at law his mother, Sarah Warner Fish; that the said Sarah died about the year 1825, intestate, leaving as her sole heir at law her granddaughter, Jesse B. Perpall, who shortly thereafter intermarried with
3 Charles M. Furman, of Charleston, South Carolina; that the said Jesse B. Furman, born Perpall, died intestate during the year 1827, leaving as her only heirs at law her husband, the said Charles M. Furman, and one son, Gabriel William Furman, the fruit of her marriage with the said Charles M. Furman; that the said Gabriel William Furman died in infancy during the year 1836, leaving his father, the said Charles M. Furman, surviving him and his only heir at law; that the said Charles M. Furman died in the year 1872, a resident of Charleston, South Carolina, leaving a last will and testament whereby all his real property was divided, one-half to his nephew, your orator, Charles M. Furman; one-fourth to his nephew, Richard K. Furman, and the remaining one-fourth to his grand nephews, your orator, Bolivar B. Furman, and Irvine K. Furman; that the said last will and testament was admitted to probate in the probate court of the county of Charleston, State of South Carolina, on or about the 2nd day of July, 1872; which said will and the probate thereof was thereafter admitted to record in the county judge's court of the county of St. Johns, State of Florida; that letters of administration with the will annexed were issued to one John E. Carew on the estate of said Charles M. Furman, deceased, by the said probate court of Charleston County, South Carolina, on or about the 2nd day of July, 1872; that John E. Carew died on or about March 30th, 1877, without having administered the said estate, whereupon, on the 13th day of December, 1882, letters of administration de bonis non with the will annexed were issued by the probate court of Charleston County, South Carolina, to your orator, Charles M. Furman, who is still the administrator de bonis non cum testamento annexo of said estate; that the said Richard K. Furman died during the year 1874, intestate as to the said Anastasia Island property and without issue, leaving as
4 his only heir his wife, Julia R. Furman; that the said Irvine K. Furman, on the 5th day of August, A. D. 1889, by his deed of conveyance of that date granted, sold and conveyed to the complainant, Alester G. Furman, all of his interest in the said Anastasia Island, which deed having been duly acknowledged was recorded in public records of St. Johns County, Florida; that the said Julia R. Furman, on the 19th day of September, A. D. 1889, by her deed of conveyance of that date, granted and sold to the complainant, Alester G. Furman, all her interest in the said Anastasia Island, which deed having been duly acknowledged was recorded in the public records of St. Johns County, State of Florida.

Your orators further show unto your honors that upon the said grant being made to the said Joseph Fish, he was placed in possession of the said land so granted to him by the Spanish authorities and that he resided thereon in his dwelling-house and cultivated an orange grove and fields thereon, which were enclosed by a substantial fence, from the time of such grant until the time of his death. During all of which time he used the wood lands on the said island for the supply of fuel and for

fencing timber, and improved his said property and exercised such acts of possession of the whole of the land so granted to him as aforesaid as it was capable of, under claim of title by virtue of his said grant. That from the time of the death of the said Joseph Fish until the present time, those claiming said Anastasia Island under the said Fish, by themselves or their agents and tenants, have occupied the said Fish homestead on the said Anastasia Island and cultivated the fields thereon, used the wood lands for fuel supply and fencing timber, and have paid taxes on said property when assessed for taxation, and have exercised such acts of possession and ownership of the said property as the same was capable of under the said claim of title thereto.

5 Your orators further show unto your honors that the State of Florida claimed title under the act of Congress approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits," certain lands of Anastasia Island which your orators aver and charge were and still are a part of the grant aforesaid to Joseph Fish, owned by your orators as aforesaid. Said lands so claimed by the State of Florida being described by the public surveys as follows, to wit: Lots one, two, three, and four of section seventeen; lots one and two of section twenty; lots three and eight of section twenty-one; the northwest quarter and east half of southwest quarter of section twenty-eight; and lots one, two, three, and six of section twenty-nine; lots two, three, and five of section thirty-two; and the west half of the northeast quarter of the southeast quarter of section thirty-three; all in township seven south of range thirty east, containing one thousand four hundred and sixty-five and fifteen one-hundredths acres (1,465.15), more or less. That the United States, on or about the 18th day of September, A. D. 1856, issued its patent to the State of Florida for the said lands; that the State of Florida, by the act of the legislature of the said State approved January 6th, A. D. 1855, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," vested in the governor of the said State, the comptroller of public accounts, the State treasurer, the attorney-general, and the register of public lands (now known as the commissioner of agriculture) of said State, and their successors in office, constituting the board of trustees of the internal improvement fund of the State of Florida, all lands granted to said State under said act of Congress of September 28th, 1850, with power to sell and transfer

6 the same; that the defendants, Henry L. Mitchell, governor of the State of Florida; William D. Bloxham, comptroller; Charles B. Collins, treasurer; William B. Lamar, attorney-general, and Lucius B. Wombwell, commissioner of agriculture, of the State of Florida, are the successors of said board of trustees of the internal improvement fund of the State of Florida, constituted by said act of the legislature of January 6th, 1855, and now constitute the said board; that the said board of trustees of the internal improvement fund of the State of Florida, on the 13th day of May, A. D. 1885, executed a deed of conveyance to the defendant, The Florida Coast Line Canal and Transportation Company, and thereby attempted to convey to said company lots one and two of section twenty; the northwest quarter and the east half of southwest quarter of section twenty-eight, and lot five of section thirty-two of township seven south of range thirty east, containing in all five hundred

and thirty-nine and forty-nine one-hundredths (539.49) acres, being part of the lands patented to the said State as aforesaid, which land, except that attempted to be conveyed to Horace S. Cummings, as hereinafter set forth, is claimed by the Florida Coast Line Canal and Transportation Company, adversely to your orators; that of the said lands, the said Florida Coast Line Canal and Transportation Company, on June 22nd, A. D. 1888, executed a deed of conveyance to the said defendant, Horace S. Cummings, and thereby attempted to convey to said Cummings the east half of the southwest quarter, and the east half of the northwest quarter of section twenty-eight of township seven south of range thirty east, containing one hundred and sixty (160) acres, which land is claimed by the said Horace S. Cummings adversely to your orators.

That the said board of trustees of the internal improvement fund of the State of Florida, on the 21st day of September, A. D. 1886,
7 executed a deed of conveyance to the defendant, The St. Johns Railway Company, and thereby attempted to convey to said company lots three and eight of section twenty-one; lot one of section twenty-nine; the west half of the northeast quarter and the northeast quarter of the southeast quarter of section thirty-three of township seven south of range thirty east, containing in all three hundred and twenty-eight and ten one-hundredths (328.10) acres, being part of the land so patented to the State of Florida, as aforesaid, which said land is claimed by the said St. Johns Railway Company, adversely to your orators; that the said board of trustees of the internal improvement fund of the State of Florida, on the 30th day of July, A. D. 1892, executed a deed of conveyance to the defendant, John A. Henderson, and there attempted to convey to said Henderson lots one, two, three, and four of section seventeen, township seven south, range thirty east, containing two hundred and eighty-six and twenty-eight one-hundredths (286.28) acres, which land is claimed by the said John A. Henderson, adversely to your orators.

Your orators further show unto your honors that the United States issued to the State of Florida, on the 27th day of June, A. D. 1895, a patent for the following lands, being a part of said Anastasia Island owned by your orators, as aforesaid described by the public surveys as follows, to wit, the northwest quarter of southeast quarter, the south half of southeast quarter, and the west half of the southwest quarter of section twenty-eight, and lots three, four, seven, and eight of section thirty-four, all in township seven south, range thirty east, containing three hundred and ninety-three and thirty one-hundredths (393.30) acres; that the United States issued to the State of Florida, on the 8th day of April, A. D. 1895, a patent for the northeast quarter of the
8 northeast quarter, the southeast quarter of the northeast and the southeast quarter of the northeast quarter of section twenty-eight, all in township seven south, range thirty east, containing in the aggregate one hundred and twenty (120) acres; that the lands so patented to the State of Florida were selections made by said State claiming the right to select the same and to procure patents therefor, under the act of Congress approved June 9th, 1880, entitled "An act to confirm certain entries and to warrant locations in the former Palatka military reservation in Florida;" that in addition to the lands so patented the said State has selected, under claims based upon the act last aforesaid, the following

lands on Anastasia Island, owned by your orators as aforesaid, described by the public surveys as follows, to wit, lots two, four, and seven of section twenty-one, lots one and four of section thirty-two, and lots two, five, and six of section thirty-four, all in township seven south, range thirty east, containing in all three hundred and sixty-seven and thirty-two one-hundredths (367.32) acres; that entries of such selections have been allowed by the Commissioner of the General Land Office of the United States, and the same are held to be patented to the said State under said act of Congress of June 9th, 1880; that the said lands so patented to the said State of Florida, and those selected by the said State upon patent to the State under the act last aforesaid, being in lieu of selections under the said act of Congress of September 28th, 1850, would vest by the said act of the legislature of Florida, approved January 6th, 1855, in the said board of trustees of the internal improvement fund of the State of Florida if the United States held the title thereto at the time of the issuance of such patents, and said board of trustees claim title to the same adversely to your orators.

Your orators further show unto your honors that the said patents
9 from the United States and the said deeds of those claiming thereunder, and said entries and selections of the State of Florida, whereby the said defendants claim title, respectively, to the said lands as aforesaid are invalid, and do not vest a title in the said defendants to the lands so claimed by them, respectively, as aforesaid, for the reason that the United States, under whom the said defendants claim, did not, at the time of issuance of such patents or at any other time, have or hold title to the said lands, or any part thereof, but that the title to the same is in your orators, holding and claiming under the said grant of the Government of Spain to the said Joseph Fish as aforesaid.

Your orators further show unto your honors that none of the said defendants are in actual possession of the said lands or any part thereof.

And your orators further show unto your honors that the said lands so claimed by the defendants adversely to your orators as aforesaid exceed in value the sum of two thousand dollars, the same being of the value of twenty-five thousand dollars. That this cause arises under the said treaty between the United States and Spain, which ratified and confirmed the said grant to the said Joseph Fish, under whom your orators claim title. And the controversy involved in this cause necessarily involves the construction of said treaty.

Your orators further show unto your honors that the said patents, entries, and deeds by and under which the defendants respectively claim title to said lands as aforesaid are clouds upon the title of your orators in the said lands and tend to depreciate the value and sale thereof, to the great damage and injury of your orators in the premises.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and
10 may, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the allegations of this bill of complaint, but not under oath, the answer under oath being hereby waived;

And that the said patents, entries, and deeds by and under which the said defendants respectively claim title to the lands so respectively claimed by them as aforesaid may be set aside and declared void as clouds upon

the title of your orators, and that the defendants and each of them may be enjoined from entering upon or taking possession of said land or in any manner disturbing the possession of your orators thereof, and that your orators may have such other and further relief in the premises as equity may require and to your honors shall seem meet:

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States, under the seal of this court, directed to the defendants, Henry Mitchell, governor of the State of Florida; William B. Bloxham, comptroller of the State of Florida; Charles B. Collins, treasurer of the State of Florida; William B. Lamar, attorney-general of the State of Florida, and Lucius B. Wombwell, commissioner of agriculture of the State of Florida, as the board of trustees of the internal improvement fund of the State of Florida; the Florida Coast Line Canal and Transportation Company, a corporation; the St. Johns Railway Company, a corporation; Horace S. Cummings, and John A. Henderson, commanding them on a certain day and under a certain penalty to be and appear before this honorable court, then and there full, true, and perfect answer make to all and singular the foregoing bill of complaint, and to stand to and abide by such order and decree in the premises as to your honors shall seem meet and agreeable to equity.

And your orators will ever pray.

FLEMING & FLEMING,
BISBEE & RINEHART,
Complainants' Solicitors.

(Endorsed:) United States circuit court, southern district of Florida. In chancery. Charles M. Furman et als. *vs.* Henry L. Mitchell, governor, et als. Amended bill of complaint. Filed Nov. 30th, 1895. E. O. Locke, clerk. Fleming & Fleming, Bisbee & Rinehart, solicitors for complainants.

11 Circuit court of the United States, southern district of Florida.

CHAS. M. FURMAN ET ALS.
vs.
H. L. MITCHELL, GOVERNOR, ET ALS.

Chancery subpœna—alias.

UNITED STATES OF AMERICA,
Southern district of Florida:

The President of the United States of America to Henry L. Mitchell, governor of the State of Florida; William D. Bloxham, comptroller of the State of Florida; Charles B. Collins, treasurer of the State of Florida; William B. Lamar, attorney-general of the State of Florida, and Lucius B. Wombwell, commissioner of agriculture of the State of Florida, as the board of trustees of the internal improvement fund of the State of Florida, and John A. Henderson.

We command you as before, and every one of you, that you appear before the judges of the circuit court of the United States of America for the fifth circuit and southern district of Florida, at Jacksonville, in said district, on the first Monday, being the second day of December next, to answer to a bill of complaint exhibited against you by Charles M. Furman, Bolivar B. Furman, and Alester G. Furman, citizens of the

State of South Carolina, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf. And this you are not to omit upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness, the honorable Melville W. Fuller, chief justice of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this thirty-first day of October, A. D. 1895.

[SEAL.] E. O. LOCKE, *Clerk.*

By N. A. GREENING, *Deputy Clerk.*

Fleming & Fleming, Bisbee & Rinehart, solicitors for compl'ts.

12 The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Jacksonville, aforesaid, on or before the day to which the above is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

[SEAL.] E. O. LOCKE,
Clerk.

By N. A. GREENING,
Deputy Clerk.

(Endorsed:) Return. Received the within chancery subpœna on the 2d day of November, A. D. 1895, and executed the same by serving a true copy hereof on H. L. Mitchell, C. B. Collins, W. B. Lamar, Lucius B. Wombwell, and W. D. Bloxham, in person, on the 2nd day of November, A. D. 1895, and also by serving a true copy hereof on John A. Henderson, in person, on the 4th day of November, A. D. 1895, at Tallahassee, Leon County, in the northern district of Florida, at the same time exhibiting to each of them this original writ.

SAMUEL PULESTON,
Marshal.

By W. T. COGSWELL,
Deputy Marshal.

Marshal's fees	$12.30
Cost	.45
	12.75

Filed November 7th, A. D. 1895.

N. A. GREENING,
Dep. Clerk.

13 In the United States circuit court, southern district of Florida.
In chancery.

CHARLES M. FURMAN IN HIS OWN RIGHT AND AS administrator of the estate of Charles M. Furman, deceased, et als.,
vs.
HENRY L. MITCHELL, GOVERNOR, ETC., ET ALS.

Affidavit for order for service on Horace S. Cummings.

Before me, E. O. Locke, clerk of the said court, personally appeared Francis P. Fleming, who, being duly sworn, says that he is a member of

the law firm of Fleming & Fleming, who are solicitors for the complainants in the above-stated cause; that subpœna in said cause was duly issued to the defendants named in the said bill, including the defendant Horace S. Cummings, on the fourteenth day of October, A. D. 1895, returnable to the first Monday of November, 1895; that the marshal of this court made return on said writ of subpœna that the said Horace S. Cummings is not to be found in the said southern district of Florida; that the said Horace S. Cummings is not an inhabitant of the southern district of Florida, and has not voluntarily appeared in this cause; that this deponent is informed and believes that the said Horace S. Cummings is a resident of the city of Washington, in the District of Columbia.

F. P. FLEMING.

Sworn to and subscribed before me this second day of December, A. D. 1895.

E. O. LOCKE,
Clerk of the United States Circuit Court
for the Southern District of Florida.

(Endorsed:) Filed Dec. 2nd, 1895. E. O. Locke, clerk.

14 In the United States circuit court, southern district of Florida.
In chancery.

CHARLES M. FURMAN IN HIS OWN RIGHT AND AS administrator de bonis non cum testamento annexo of the estate of Charles M. Furman, deceased, Bolivar B. Furman, and Alester G. Furman,
vs.
HENRY L. MITCHELL, GOVERNOR OF FLORIDA, et als., as the board of trustees of the internal improvement fund of the State of Florida, Horace S. Cummings et als.

Order for service on Horace S. Cummings.

This being a suit commenced to remove a cloud upon the title to real estate within this the southern district of Florida, and it appearing to the court that a subpœna was duly issued herein to the defendant, Horace S. Cummings, on the 14th day of October, 1895, returnable to the first Monday of November, 1895, and that return was made thereon by the marshal that the said Horace S. Cummings is not to be found in this the southern district of Florida, and that he is a resident of the city of Washington, in the District of Columbia, and that he has not voluntarily appeared in this cause.

Now, therefore, it is ordered that the said Horace S. Cummings do appear, plead, answer, or demur to the bill of complaint filed in this cause by Monday, the first Monday of January, being the 6th of Jan'y, A. D. 1896.

Done and ordered this second day of December, A. D. 1895.

JAMES W. LOCKE, *Judge.*

(Endorsed:) Order for service on Horace S. Cummings. Filed Dec. 2, 1895. E. O. Locke, clerk.

15 In the United States circuit court, 5th circuit & southern district of Florida.

CHARLES M. FURMAN ET AL.
versus
H. L. MITCHELL, GOVR., &C., JOHN A. Henderson et al.

Appearance of John A. Henderson, deft.

Comes now the defendant John A. Henderson and enters his appearance in this cause.

12, 2, '95. JOHN A. HENDERSON.

(Endorsed:) Appearance of John A. Henderson, deft., filed Dec. 2nd, 1895. N. A. Greening, D. C.

16 United States circuit court, southern district of Florida. In chancery.

C. M. FURMAN ET AL.
vs.
H. L. MITCHELL, ETC., ET ALS.

The clerk of said court will please enter a decree pro confesso against John A. Henderson for want of plea, answer, or demurrer to the bill of complaint heretofore filed in this case.

FLEMING & FLEMING,
BISBEE & RINEHART,
Solicitors for Complainants.

(Endorsed:) Præcipe for decree pro con. Filed Mar. 2, 1896. E. O. Locke, clerk.

17 Circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL., COMPLAINANTS,
vs.
HENRY L. MITCHELL, GOVERNOR, ET AL., defendants.

Now comes the defendants, Henry L. Mitchell, governor of the State of Florida; Charles B. Collins, treasurer of the State of Florida; William B. Lamar, attorney-general of the State of Florida, and Lucius B. Wombwell, commissioner of agriculture of the State of Florida, as the board of trustees of the *of the* Internal Improvement Fund of the State of Florida, by W. W. Dewhurst, their solicitor, and appear specially and solely to move to dismiss the bill of complaint as amended in the above entitled cause upon the grounds that this court has no jurisdiction of the case.

W. W. DEWHURST,
Solicitor for Henry L. Mitchell, Governor, and others, sued as the Board of Trustees of the Internal Improvement Fund of the State of Florida.

(Endorsed:) Special appearance of trustees of I. I. Fund of Fla. Filed Dec. 2nd, 1895. E. O. Locke, clerk.

18 Circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHELL ET AL.

Special appearance of Horace S. Cummings.

Now comes the defendant, Horace S. Cummings, by W. W. Dewhurst, his solicitor, and appears specially in the above-entitled suit, solely to move to dismiss the bill of complaint and to dismiss as to this defendant upon the ground that this court has no jurisdiction of the case against this defendant, as appears upon the face of the bill.

W. W. DEWHURST,
Solicitor for Defendants Cummings.

(Endorsed:) Special appearance of Horace S. Cummings. Filed Jan. 6, '96. N. A. Greening, deputy clerk.

19 United States circuit court, southern district of Florida.

CHARLES M. FURMAN, BOLIVAR B. FURMAN, and Alester G. Furman
vs.
HENRY L. MITCHELL, GOVERNOR, ET AL.

Appearance of St. Johns Railway Co.

The clerk of said court will please enter our appearance for the St. Johns Railway Company, one of the defendants in the above-entitled cause, as of the rule day in November, 1895.

PARROT and HAMLIN.

(Endorsed:) Appearance of St. Johns Ry. Co. Filed Nov. 4th, 1895, N. A. Greening, D. C.

United States circuit court, southern district of Florida.

CHARLES M. FURMAN, BOLIVAR B. FURMAN, and Alester G. Furman
vs.
HENRY L. MITCHELL, GOVERNOR, ET AL.

Appearance of the Florida Coast Line Canal and Transportation Co.

The clerk of said court will please enter our appearance for the Florida Coast Line Canal and Transportation Company, one of the defendants in the above-entitled cause, as of the rule day in November, 1895.

PARROTT and HAMLIN.

(Endorsed:) Appearance of the Fla. Coast Line Canal and Transportation Company. Filed Nov. 4th, 1895. N. A. Greening, D. C.

20 In the circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL., COMPLAINANTS,
vs.
HENRY L. MITCHELL ET AL., DEFENDANTS.

Grounds of objection to jurisdiction set out by defendants.

Now comes the defendants Henry L. Mitchell and others sued herein as the board of trustees of the internal improvement fund of the State of Florida, and on this the 2nd day of December, A. D. 1895, in obedience to the order of the court made in this cause, filed herein their statement of specific grounds apparent on the face of the bill why this court has no jurisdiction of the said suit.

1st. Because the title to the lands in controversy set up by complainants and the claim under which they sue have not been recognized and confirmed by the United States of America and is not enforc'able in its cour.s.

2nd. It appears there has been a final adjudication of the title of the lands described in the bill, as claimed by the said defendants as aforesaid, by the proper tribunal of the United States adverse to the claim of title in complainants.

3rd. That a determination of the title of complainants belongs to the Executive Department of the Government of the United States of America, and for that reason is not cognizable by this court.

4th. That it appears by the bill that the claim set up by the complainants in their said bill is of a political nature, and not cognizable by this court.

5th. Because it appears that the political department of the United States of America has determined the claim of title set up by complainants invalid as against the title of the United States to the lands

21 in controversy.

6th. Because, under the authority of the political department of the United States of America, the Executive Department of said Government has determined the lands in controversy claimed by said defendants not to be the property of complainants.

7th. Because it appears by the bill that no survey of the alleged claim under the Spanish Government to the lands in controversy has ever been made.

8th. Because the claim of title to the lands in controversy set up by and in the bill as derived from the authorities of Spain is barred by the laches of complainants and those under whom they claim and by the statutes of the United States of America.

9th. Because it appears by the bill that complainants and those under whom they claim have forfeited any right or title they may have had in and to the lands in controversy.

10th. It appears by the bill that complainants are not legally in possession of the lands in controversy claimed by defendants.

W. W. DEWHURST,
Solicitor for Defendants Mitchell et al., Trustees, &c.

(Endorsed:) Grounds of objection to jurisdiction set out by defendants. Filed Dec. 2, 1895. E. O. Locke, clerk.

22 Circuit court of the United States, southern district of Florida.

CHAS. M. FURMAN ET AL.
vs.
H. L. MITCHELL ET AL.

Now comes the defendants, Henry L. Mitchell, governor of the State of Florida; Charles B. Collins, treasurer of the State of Florida; William B. Lamar, attorney-general of the State of Florida, and Lucius B. Wombwell, commissioner of agriculture of the State of Florida, as the board of trustees of the internal improvement fund of the State of Florida, by W. W. Dewhurst, their solicitor, and, having appeared specially in said cause for the purpose of making this motion, move the court to dismiss the bill of complaint in the above-entitled cause, because the bill shows on its face that this court has no jurisdiction of the case.

W. W. DEWHURST,
Solicitor for the Defendants, Henry L. Mitchell, Governor, and Others, sued as the Board of Trustees of the Internal Improvement Fund of the State of Florida.

This motion coming on to be heard upon the foregoing motion, and it being fully heard and considered, it is ordered said motion be denied, and the defendants have until the first Monday of February to plead, answer, or demur.

Dec. 21st, 1895. JAMES W. LOCKE, *Judge.*

23 And said order dismissing said motion is excepted to by defendant's counsel.

Dec. 21st, 1895. JAMES W. LOCKE, *Judge.*

From Chancery Motion Docket "A," page 41.

24 Circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHELL ET AL.

Motion of H. S. Cummings to dismiss.

Now comes the defendant, Horace S. Cummings, by W. W. Dewhurst, his solicitor, and having appeared specially in said suit solely for the purpose, moves to dismiss the bill of complaint filed in said cause, and also to dismiss as to this defendant, because it appears upon the face of the bill that this court has no jurisdiction of the case and no jurisdiction of the case against this defendant.

In specification of the grounds of the motion he says: That by statute, this court is prohibited from taking jurisdiction of the case made by the bill; that the claim of title under which complainants' claim has not been recognized by the United States, and is not enforc'able in its courts against a title derived from the United States to the lands as public lands. It appears from the bill there has been a final adjudication of the title to the lands alleged in the bill as claimed by the defendants by

the Land Department of the United States, having jurisdiction, and that adjudication was adverse to the complainants' claim of title to the lands in controversy.

It appears that complainants' alleged claim has never been recorded nor the lands segregated from the public domain, and therefore the title and right, if any, of complainants must be determined by the Executive or political department of the United States. Because the bill shows that jurisdiction is not alone founded on the fact that the action is between citizens of different States, and this defendant is not an inhabitant of the district in which the suit is brought.

Because this defendant is not a citizen of a State within the meaning of the act of Congress conferring jurisdiction.

W. W. DEWHURST, *Def't's. Sol.*

(Endorsed:) Motion of H. S. Cummings to dismiss. Filed and entered Jan. 6th, 1896. N. A. Greening, dep. clerk.

25 Circuit court of the United States for the southern district of Florida.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHELL ET AL.

Objections to taking of testimony.

Now comes the defendants Henry L. Mitchell, governor of the State of Florida; W. D. Bloxham, comptroller; C. B. Colliens, treasurer; W. B. Wombwell, commissioner of agriculture of said State of Florida, as the board of trustees of the internal improvement fund of the State of Florida, and object to the taking of testimony of Veranceo Sanchez, by the complainants above named, because there is no cause depending in this court to authorize the taking of testimony. And because by the statute of the United States no action at common law or proceeding in equity can ever be sustained in any court whatever upon the claim set up in complainants' bill filed in said above-named cause, because by the laws of the United States this court and all other courts are forbidden to take or entertain jurisdiction of the claims attempted to be enforced by complainants.

W. W. DEWHURST,
Defendants' Solicitor.

(Endorsed:) Objections to taking testimony. Filed Dec. 21/95. E. O. Locke, clerk.

26 Circuit court of the United States for the southern district of Florida.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHELL ET AL.

Objections to taking of testimony.

Now come the defendants Henry L. Mitchell, governor of the State of Florida; W. D. Bloxham, comptroller; C. B. Colliens, treasurer; W.

B. Lamar, attorney-general; L. B. Wambwell, commissioner of agriculture of said State of Florida, as the board of trustees of the internal improvement fund of the State of Florida, and objects to the taking of testimony of Ann A. Furman, by the complainants above named, because there is no cause depending in this court to authorize the taking of testimony. And because by the act of Congress no action at common law or proceeding in equity can ever be sustained in any court whatever upon the claim set up in complainants' bill filed in said above-named cause, because by statute this court is forbidden to take jurisdiction of said cause attempted to be brought in this court and all other courts are forbidden to take jurisdiction thereof.

W. W. DEWHURST,
Defendants' Solicitor.

(Endorsed:) Objections to taking of testimony. Filed Dec. 21st, 1895. E. O. Locke, clerk.

27 Circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL.)
vs.
HENRY L. MITCHELL ET AL.)

Demurrer to jurisdiction.

The demurrer of Henry L. Mitchell, governor of the State of Florida; W. D. Bloxham, comptroller; C. B. Collins, treasurer; W. B. Lamar, attorney-general, and L. B. Wombwell, commissioner of agriculture of said State, as the board of trustees of the internal improvement fund of the State of Florida.

Those defendant' by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill to be true in such manner and form as the same are therein set out and alleged, do demur thereto and for cause of demurrer show that it is against the course and practice of this court and not within the jurisdiction of this court to interfere and afford the relief prayed for in complainants' said bill, because it is apparent from complainants' own showing by their said bill: That by statute this court is prohibited from taking jurisdiction of the case made by the bill; that the matters sought to be determined by this suit are pending before the Executive Department of the United States; that the claim of title which the complainants set up as the basis of their right to the lands in controversy has not been recognized by the United States of America, and is not enforc'able in its courts against a claim and title derived from the United States to the lands as public lands. It appears from the bill there has been a final adjudication of the title of the lands alleged in the bill to be claimed by these defendants by the land department of the United States having jurisdiction, and that such adjudication was adverse to the claim of title in the complainants to the lands in controversy.

28 It appears from the bill that the claim of title alleged to have been derived from Spain before the cession of the Floridas to the United States has never been recorded under the laws of the United

States requiring such record, nor have the lands been segregated from the public domain, and that therefore the title and right of the complainants, if any, must be determined by the Executive or political department of the United States, and is not cognizable in this court.

That the title therein set up is not enforc'able against the United States or its grantees.

Wherefore these defendants demand judgment of this honorable court whether they shall be compelled to make further or other answer to the said bill or any matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf unjustly sustained.

W. W. DEWHURST,
Solicitor for Henry L. Mitchell et al., Defendants as the Board of Trustees, &c.

I certify that the foregoing demurrer is, in my opinion, well founded in point of law.

W. W. DEWHURST,
Solicitor for Henry L. Mitchell et al., Defendants as the Board of Trustees, &c.

STATE OF FLORIDA, *Leon County:*

L. B. Wombwell, being duly sworn, deposes and says: I am one of the above-named defendants and salesman of the board of trustees of the internal improvement fund of the State of Florida. The foregoing demurrer is not interposed for delay.

L. B. WOMBWELL,
Commr. of Agr. of Florida.

Sworn to before me this 30th day of December, A. D. 1895.

[SEAL.] J. B. WHITFIELD,
Notary Public, State of Florida at Large.

(Endorsed:) Demurrer to jurisdiction. Filed Jan. 3rd, 1896. E. O. Locke, clerk.

29 Circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHELL ET AL.

Demurrer for want of equity.

The demurrer of Henry L. Mitchell, governor of the State of Florida; W. D. Bloxham, comptroller; C. B. Collins, treasurer; W. B. Larmer, attorney-general; L. B. Wombwell, commissioner of agriculture of said State, as the board of trustees of the internal improvement fund of the State of Florida.

These defendants by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill to be true in such manner and form as the same are therein set forth and alleged do demur thereto, and for cause of demurrer show that the complainants

have not in and by their said bill made or stated such a cause as doth or ought to entitle them to any such discovery or relief as is therein sought and prayed for, because it is apparent from complainants' own showing by their said bill that no survey of the claim alleged to have been derived from the Government of Spain has ever been made, and the bounds of the alleged grant are vague and indefinite. That a competent tribunal of the United States has determined the lands in controversy not to be within the bounds of the said alleged Spanish grant. The claim of title to the lands in controversy set up in the bill and alleged to have been derived from the Government of Spain is barred by the laches of complainants and those from whom they claim. The claim of title to the lands in controversy set up by complainants in their said bill is barred by statute. It appears by the bill that complainants and those under whom they claim have forfeited any right to the lands in controversy, if any they had, by failure to comply with the lawful regulations required by the laws of the United States for the presentation and recording of claims to lands in Florida derived from Spain. That complainants have not such a possession as entitles them to maintain this action. The complainants' claim under an alleged grant from the Government of Spain of ten thousand acres of land, but the legislative department of the United States has declared all grants of land in the Floridas made by the King of Spain or his lawful authorities prior to the 24th of January, A. D. 1818, confirmed only to the extent of a league square, and directed that the excess of said grants shall be liable to be sold as public lands of the United States, and said bill fails to aver that the lands in controversy are not within the excess above a league square of said alleged grant under which complainants claim title.

Wherefore these defendants demand judgment of this honorable court whether they shall be compelled to make further or other answer to the said bill or any matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf unjustly sustained.

W. W. DEWHURST,
Solicitor for Henry L. Mitchell et al., as the Board of Trustees, &c.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

W. W. DEWHURST,
Solicitor for Henry L. Mitchell et al., as the Board of Trustees, &c.

STATE OF FLORIDA, *Leon County:*

L. B. Wombwell, being duly sworn, deposes and says: I am one of the above-named defendants and salesman of the board of trustees of the internal improvement fund of the State of Florida. The foregoing demurrer is not interposed for delay.

L. B. WOMBWELL,
Commr. of Agr. of Florida.

Sworn before me this 30th day of December, A. D. 1895.

[SEAL.] J. B. WHITFIELD,
Notary Public, State of Florida at Large.

(Endorsed:) Demurrer for want of equity. Filed Jan. 3rd, 1896. E. O. Locke, clerk.

31 In circuit court of the United States, southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL., COMPLAINANTS,
vs.
HENRY L. MITCHELL ET AL., DEFENDANTS.

Demurrer of Fla. Coast Line Canal & Trans. Co. & St. Johns Ry. Co. to amended bill.

The demurrer of the Florida Coast Line Canal and Transportation Company and the St. Johns Railway Company, corporations of the State of Florida, defendants, to the amended bill of complaint of Charles M. Furman and others, complainants.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said amended bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, demur to said amended bill, and for cause of demurrer show, that, etc.:

First. The court has no jurisdiction of the parties or subject-matter.

Second. The cause of action is barred by the laches of complainants, and by acts of Congress requiring specific acts on the part of claimants of lands derived from Spanish grants and concessions to be done and performed, which do not appear to have been complied with within the limit allowed by law.

Third. There was no law whereby the Spanish authorities could legally grant to or place Jesse Fish in possession of ten thousand acres of land as set forth in the bill, and no authority in any tribunal of the United States Government to allow or confirm the same except by special act of Congress, which is not set forth.

Fourth. The allegations of possession as to said ten thousand acres are not sufficient to enable complainants to maintain their action,
32 nor is the relationship of complainants to Jesse Fish & the Fish claims, or the deraignment of title sufficient to show the title to be valid.

Fifth. Said amended bill shows a survey and patents by the United States Government and many other acts of ownership and control which not only negative all affirmative acts of possession and control by complainants as to said entire grant, but from which the patents and title of the United States must be legally presumed to be valid and all necessary and incidental acts to have been performed.

Sixth. If this court has any jurisdiction in the premises it has none as to a bill merely to quiet title and seeking no other relief.

Seventh. The land described in said amended bill as Anastasia Island appears to have been conveyed to the United States by treaty with Spain.

Eighth. The amended bill shows no authority or right of Chas. M. Furman as adult to maintain this suit, or that he is administrator in Fla.

Ninth. In other respects there is no equity shown in and by the amended bill, & there is an adequato remedy at law.

Whereupon, and for divers other good causes of demurrer appearing in the said bill of complaint, the defendants demur to the said bill, and to all the matters and things therein contained, and pray the judgment

of this honorable court whether they shall be compelled to take any further or other answer to the said amended bill, and they pray to be dismissed with their reasonable costs in this behalf sustained.

PARROTT & HAMLIN,
Solicitors for said Defendants.

33 We certify that, in our opinion, the foregoing demurrer is well founded in law, and proper to be filed in the above cause.

PARROTT & HAMLIN,
Solicitors for said Defendants.

STATE OF FLORIDA,
County of St. Johns:

J. R. Parrott, being duly sworn, says that he is vice-president of the Florida Coast Line Canal and Transportation Company and the St. Johns Railway Company, corporations under the laws of Florida, and defendants named in the foregoing demurrer to the bill of complaint of Charles M. Furman and others, and that said demurrer is not interposed for the purpose of delaying said suit, or any proceedings therein.

J. R. PARROT.

Subscribed and sworn to before me this 6th day of February, A. D. 1896.

[SEAL.] H. S. JENISON,
Notary Public, State at Large.

[SEAL OF ROAD.]

(Endorsed:) Demurrer of Fla. Coast Line Canal & Trans. Co. & St. Johns Ry. Co. to amended bill. We consent to the filing of within demurrer this Feb. , 1896. Filed Feb. 7", 1896. N. A. Greening, deputy clerk.

34 Circuit court of the United States, southern district of Florida.

C. M. FURMAN ET AL.
vs.
H. L. MITCHELL, GOVERNOR ET AL.

Bill to remove cloud from title upon demurrer to bill.

This cause coming on to be heard upon the demurrer to the bill, and being fully heard and argued by counsel and fully considered, it is ordered that the demurrer herein be overruled and defendants have until the rule day of March to plead or answer.

Done in open court this 8" day of February, 1896.

JAMES W. LOCKE, *Judge.*

(Endorsed:) Furman vs. Mitchell. Order overruling demurrer to bill. Filed Feb. 8", 1896. N. A. Greening, D. C.

35 Circuit court of the United States, southern district of Florida.

CHAS. M. FURMAN ET AL.
vs.
HENRY L. MITCHELL ET AL.

This cause coming on to be heard upon the demurrer of Fla. C. L. Canal & Trans. Co. & of St. Johns Ry. Co. to the amended bill, and

having been fully heard and considered, it is ordered that said demurrer be overruled and said defendants have until the rule day of June to plead or answer.

Jacksonville, Florida, May 9", 1896.

JAMES W. LOCKE, *Judge.*

(Endorsed:) Furman vs. Mitchell. Order overruling demurrer of F. C. L. & Canal Trans. Co. & St. John Ry. Co. Filed May 9", 1896. E. O. Locke, clerk.

36 In circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL.)
vs.
HENRY L. MITCHELL ET AL.)

The joint and separate answer of Henry L. Mitchell, governor of the State of Florida; William D. Bloxham, comptroller of the State of Florida; Charles B. Collins, treasurer of the State of Florida; William B. Lamar, attorney-general of the State of Florida, and Lucius B. Wombwell, commissioner of agriculture of the State of Florida, as the board of trustee' of the internal improvement fund of the State of Florida, and of Horace S. Cummings, defendants, to the amended bill of compl*a*int of Charles M. Furman and others, complainants.

1. These respondents, reserving all manner of exception to the errors and uncertainties in said bill, for answer to so much thereof as is material for them to answer, say:

2. They deny that complainants own and hold title in fee simple to that tract of land lying and being in St. Johns County, State of Florida, within townships 7', 8', 9' south, of range 30 east, known as Anastasia or St. Anastasia Island, excepting therefrom what was known at the time of the alleged Spanish grant, in said bill claimed to have been made, as the "Kings Quarries."

37 3. They deny that the "Kings Quarries," as the same were known and bounded on or about the year A. D. 1795, were about 200 acres, lying on the east of the Old Kings road between the same and the old light-house.

4. They deny that the lands in controversy are wholly without the boundaries of the Kings Quarries as they existed on or about the year A. D. 1795.

5. They aver that the Kings Quarries under the Spanish ownership and control of the Floridas embraced many hundred acres of the lands of Anastasia Island and nearly all the lands of said island which under the authority of the United States were surveyed as public lands in township 7' south, of range 30 east.

6. They deny that Anastasia Island was granted by the Government of Spain to Jose or Joseph Fish about the 19th day of June, A. D. 1795, or at any other time, or that the title to the lands in controversy was ever granted by the King of Spain or his lawful authorities; and they aver the only part of Anastasia Island, the title to which was ever granted by the King of Spain or his lawful authorities, is a tract of about

300 acres granted to Lorenzo Rodriquez in A. D. 1793, and a tract of about 20 acres granted to F. X. Sanchez in A. D. 1802, both of which tracts have been confirmed by the United States and surveyed and platted as private grants upon the maps and plats of the Land Department of the United States.

7. They deny that the treaty with Spain ratified by the United States the 19th day of February, A. D. 1821, ratified and confirmed any grant of the lands in controversy in this suit to the ancestor of the complainants, or gave title thereto to any other person save only to the United States of America as the successor of the King and the General Cortes of Spain.

38 8. They deny that Joseph Fish died about the year A. D. 1798 and aver on information and belief that he was living in A. D. 1803.

9. They deny that Sarah Warner Fish died intestate, and aver on information and belief that she left a last will and testament, executed in due form of law, and they are advised that said last will was probated in the State of South Carolina, and a copy thereof duly probated in the probate office for St. Johns County, Florida.

10. They are not advised as to the line of descent set out in the bill, save that they have been advised that Gabriel W. Perpall married a sister of Joseph Fish and daughter of Sarah Fish, and that there were two daughters born, issue of that marriage, and they leave complainants to make such proof of descent from the common ancestor, Joseph Fish, as they may be advised.

11. They aver that the alleged deeds of conveyance of said Anastasia Island set out on the 3rd and 4th pages of complainant's bill are void and convey no title to said lands, and that said alleged grantors were not in possession of the lands alleged to have been conveyed at the date of said alleged deeds, but that the same were in the adverse possession of the United States and those claiming thereunder.

12. They deny that Joseph Fish was placed in possession of Anastasia Island, or of Anastasia Island except the Kings Quarries, as a grant of the said lands to him by the King of Spain or his lawful authorities.

13. They deny that Joseph Fish resided on Anastasia Island from A. D. 1795 until his death; they deny that from A. D. 1795 to
39 the date of his death he exercised such acts of possession of the whole of Anastasia Island, except the Kings Quarries, as it was capable of, under claim of title, or that he claimed title as owner of said island, except the Kings Quarries.

14. They deny that from the time of the death of Joseph Fish until the filing of this bill those claiming said Anastasia Island under the said Fish, by themselves or their agents, have occupied the Fish homestead, or Anastasia Island, and cultivated the fields thereon, used the woodland for fuel supply and fencing timber, and exercised such acts of possession and ownership of the said property as the same was capable of under the said claim of title thereof, as is alleged in said bill.

15. They aver that if all the allegations of occupancy and acts of possession alleged in the bill were true it is immaterial to establish title to any other lands than those embraced in the Fish homestead; that the Fish homestead was a point of land on the extreme west shore of Anastasia Island, nearly surrounded by water, and cut off from the main

island of Anastasia, and embraces about 100 acres of land, and is well known by general reputation as "Fishs Island."

16. They admit the United States patented to the State of Florida the several tracts of lands described in said bill, and the authority of the said defendants, the Trustees of the Internal Improvement Fund of the State of Florida, to take, hold, and convey the title so conveyed by the United States.

17. They admit that the lands patented by the United States to the State of Florida on the 27th day of June, A. D. 1895, namely,
40 393 30-100 acres, and on April 8th, 1895, namely, 120 acres, were acquired under the act of Congress, approved June 9th, A. D. 1890, and they aver that before any patent could be issued for these lands the State of Florida was required to establish before the Land Department of the United States that the lands were vacant and unappropriate publi' lands of the United States; that Charles M. Furman, in behalf of these complainants, appeared before said tribunal and contested the matter and presented and urged their said claim to the same under the same title set up in their bill, and that there was a final determination before said tribunal, with authority under the laws of the United States to decide, admitted by these complainants, which was adverse to the claim of said complainants herein, and that said lands were not private lands, the particulars of which are more fully set forth in the 49th paragraph of this answer.

18th. They admit that in addition to [illegible]ds so patented to the State of Florida, under said act of Congress, approved June 9th, A. D. 1880, the said State has selected the lands as set out in said bill, 367 32-100 acres, and that the entries of such selections have been allowed by the Commissioner of the General Land Office of the United States, and that the same are held to be patented to the State of Florida under the act of June 9th, A. D. 1880.

19. They aver that such allowance and holding for patent by the Commissioner of the General Land Office as set forth in said bill is an adjudication by a competent tribunal that the lands are public lands of the United States; that such adjudication before the issuance of a patent is subject to review in said Department and correction if erroneous.

41 20. They deny that the patents from the United States and the said deeds and entries and selections of the State of Florida whereby the defendants claim title to the lands in controversy are invalid and do not vest title in the defendants.

21. They aver that the United States at the time of the issuance of such patents did have title to said lands, and deny that the title to said lands or any title to said lands is in the complainants.

22. They deny that the defendants are out of possession of the lands in controversy, and they aver that the several defendants are in possession of the several tracts of land by them claimed as owners thereof.

23. They admit that this controversy involves the construction of the treaty between Spain and the United States, and they aver that complainants in their said bill have set out as their title an incipient and inchoate title under the "Government of Spain," not cognizable in the courts of the Government until recognized or confirmed by the Congress of the United States; that by the rules established in the Territory of Florida by

the authority of the King of Spain for the granting of lands, a grant from the Government of Spain signified only the first concession or right of occupancy of the royal domain; that perfect or complete grants were recognized by the treaty with Spain, but incomplete grants were ratified by the treaty, to the same extent they would have been valid had the Territory remained under the King of Spain; that if there had been a complete grant of Anastasia Island at the date of the treaty the owners thereof were authorized under the laws of the United States to have the same surveyed without expenses as a private claim by the United States,
42 but by the averments of their said bill complainants show that said lands have been surveyed as public lands.

24. They deny that the patent entries and deeds issued and secured to defendants by the United States are clouds upon the title of complainants.

25. That the chancellor may be advised of all the pertinent facts of this suit so far as known to these respondents, they say that Anastasia Island is a barrier of the sea, consisting chiefly of high sand hills blown in from the sea beach, covered with "scrub," a low growth of hard wood; that through the center of the northern part, in township 7, there runs north and south a ledge of coquina rock from one-half to three-quarters of a mile wide; that all the lands are barren and wholly unfit for any purpose whatever save seashore residence, and of no value apart from their proximity to a city patronized as a winter resort; that on the western shore of said island, nearly separated from the main island by a strip of low ground or "swale," is a neck of land called Fish's Island, containing about 60 to 100 acres which is arable land, and on this point was an orange grove and cultivated fields of about thirty acres under enclosure, and houses and outbuildings.

26. That complainants or their ancestor have never been in the possession of Anastasia Island; that of the lands described in complainants' bill they never had any right or title whatever to any except a part of lots (2), three (3), and six (6) of section 29, township 7, range 30 east, which embraced the orange grove of "Bergal" plantation, alleged to have been sold by the Spanish Government in probate proceedings upon the estate of Jose Fish about March 21st, A. D. 1792; that to this "Bergal" plantation the heirs of Jose Fish might have had an equitable title,
43 which, although the same was never surveyed or in any way defined in area or bounds at the sale or by the Spanish Government, by confirmation by the United States, as the successor of the King of Spain, might have been perfected into a legal title; that as against the United States these claimants and their ancestor and predecessors in title have forfeited any right they may have had, by failure to present, record, and have surveyed their claim to the said lands so purchased, and by their failure under the Spanish control of the Floridas, to have an official survey, plat, and segr'ation from the royal domain, of the lands claimed to have been appraised and sold at said probate sale as the Bergal plantation, the alleged property of Jose Fish, senior.

27. These respondents further say that Anastasia Island was turned over by Governor Coppinger in behalf of the King of Spain to Col. Robert Butler on behalf of the United States on the 10th day of July, A. D. 1821, as one of the adjacent islands named in the treaty ratified between Spain and the United States on February 19th, A. D. 1821, and as a part of the royal domain, having been specially designated in the correspond-

ence between the respective agents as being a part of the public or royal domain not theretofore granted, and upon which was the Lookout House, a fortified and garrisoned place belonging to the King of Spain, and was included in the inventory relating to the adjacent islands of the province of East Florida, the public lots, squares, public edifices, and other buildings which were not private property, which was delivered to Lieutenant T. J. Baird of the United States Army, on behalf of the United States Army, on behalf of the United States by Governor Coppinger, Spanish governor of East Florida, on or about the 22nd day of June, A. D. 1821.

28. They aver that the lawful authorities of the King of Spain delivered to the authorities of the United States of America, in
44 A. D. 1821, at the transfer of sovereignty of the Territory of East Florida and of the public property, lots and buildings of the King of Spain to the United States, the lands in controversy in this suit as a part of the royal domain, and that the authorities of the United States then went into the actual occupancy of a part of said lands, and the possession of the whole of Anastasia Island, save two Spanish grants, one to Rodriques and the other to F. X. Sanchez.

29. That if Jose Fish acquired any title to the island of Anastasia under the alleged grant of the 19th of June, A. D. 1795, which these respondents deny, the King of Spain annulled said grant prior to the cession of Florida to the United States, having full power to do so.

30. That June 19th, A. D. 1795, the only law, ordinance, or decree of the Spanish Government in force in the Floridas vesting in the Spanish governors power to make grants of land was the royal order of 1790; that under same royal order Governor Quesada, Spanish governor of East Florida in A. D. 1795, required ten years of continued and uninterrupted possession before a full title was granted to the claimant, who upon petition had received a grant or concession and been put in possession of lands, and by proclamation dated St. Augustine, Sept. 2nd, A. D. 1790, declared that, although the laws of the Indies authorized him to make absolute titles to the lands of the province, *be* abstained therefrom, but would forward to the King his recommendations, persuaded that those obtaining grants from him would be confirmed in the possession of the same; and by proclamation dated Nov. 20th, 1790, the same governor declared that the grants of lands be 100 acres for the father
45 of a family, and 50 acres to each white person, or of color, of which said family was composed, but if a greater quantity could be cultivated they shall obtain an additional thousand acres, and reserving to the Government the right of absolute privation; that instructions for the survey of lands and for recording upon oath the members of the family of the grantee, with information that certain conditions must be performed before the claimants could consider themselves owners in absolute right was issued to Pedro Marrot, surveyor-general, in Oct. 24, A. D. 1791; that by order of Governor White, promulgated St. Augustine, Oct. 12, A. D. 1803, it was provided that all persons, though they had obtained the corresponding title of property from the notary's office, shall lose the right to the same, and they be granted to others, upon proof of their being uncultivated at least two years.

31. These respondents say that Jose Fish never acquired any title or right to Anasrasia Island; that the lands on Anastasia Island in controversy in this suit were not susceptible of cultivation, and were never

cultivated by Jose Fish or any other person; that the family of Jose Fish in A. D. 1795, or thereafter, did not consist of two hundred persons, nor of any considerable number of persons; that no person except the governor of the province was entitled to make grants of lands under the Spanish laws; that if any other person had authority to make grants the title so granted were incipient until confirmed by the governor; that by failure to perfect his title within the time prescribed by the royal ordinance, the said Jose Fish, if he had received any concession of Anastasia Island, would be considered under the Spanish law as having abandoned all claim to the lands conceeded; these respondents
46 are advised, and allege on information and belief, that any proceedings purporting to be a concession for 10,000 acres, dated June 19, 1795, to Jose Fish, found among the archieves delivered by Spain to the United States, at the cession of Florida, are forgeries; that if not forgeries they will be found to be so irregular and variant from the regular and legal forms used in making grants of lands under the Spanish authority as to cast such doubt upon their genuineness and force as records of conveyance as would preclude their use before any tribunal as evidence of title; and they aver it is a matter of history that the papers kept in the office of the secretary of the Spanish governor in the province of East Florida were kept in loose and detached sheets, and certain fraudulent documents were known to have been smuggled into the archieves about the time of the transfer of Florida from Spain and before the surrender of the archives to the United States; that respondents are advised, and so aver, that any claim which said Jose Fish ever had will be found to be an alleged grant purporting to be signed by one Morales, the commandant of the third battalion of Cuba, and not by the governor—an unheard-of, anomalous proceeding under Spanish law, without authority and not found in any other claim for lands under the Spanish Government; that no authority existed in Morales to make a grant of lands under the King of Spain. and no other title or claim to lands in East Florida save the claim of Jose Fish is based on a grant from Morales. That while, by the Spanish regulations for the granting of lands the party receiving a concession of land from the governor was required to have an official survey thereof made by the Government officer designated the surveyor-general, which survey in the original was filed in the official records of the Government, and a certified copy given the claimant, if said Jose Fish has any record of a delivery of possession
47 of any lands on Anastasia Island to him, these respondents aver it to be nothing but a description of a "soiree" held on said island by said Fish, an alleged notary, Zubriazette, Solana, an appraiser, and a workman named Lorente, who claimed that they went fixing up "stakes to point out the boundaries across the island and separated the quarries, saying that all besides them was what corresponded to Jose Fish," the mere narration of which is too trifling for consideration as evidence of a grant from the King of Spain. That if said Jose Fish can produce any paper title to the lands in controversy, which is denied by these respondents, these respondents aver it is not in the form used in making grants, and contains no words of grant according to the Spanish custom, and no words employed in Spanish grants which intend to sever lands from the royal domain and convey a legal title, and to be unlike any grant found in the archives or records of land titles in Florida, not to be in the name of

the King or even in the name of the governor, and with no recitation as made under or by virtue of any royal order, or by virtue of any law, ordinance, or regulation, valid under the laws of Spain.

32. These respondents, further answering, say that if Jose Fish ever acquired any right or title to Anastasia Island he afterwards relinquished it to the Spanish Government, and that he took a royal title to other lands, as a settler under the royal order of 1790; that it was not possible for Jose Fish to have acquired two separate detached parcels of land as a settler under the Spanish laws; that a real title or patent was granted by Governor Coppinger to the heirs of Jose Fish on April 24, A. D. 1819, for 500 acres of land on the west bank of the Matanzas River,
48 about 20 miles south of St. Augustine, under a concession under the royal order of 1790 to said Jose Fish, dated April 1st, A. D. 1791; that Quesada was governor of East Florida on the 19th day of June, A. D. 1795.

33 These respondents further say that the archieves and documents which relate to property in Florida, while a province of Spain, both public and private, were turned over by Spain to the United States; that among said archieves was a complete list of all real titles or patents for lands granted by the lawful authorities of the King of Spain in East Florida; that by said list it appears that no patent or complete title was ever issued for the lands on Anastasia Island to Jose Fish; and these respondents aver that if said Jose Fish had received a complete title to said lands or any part thereof, his real title or patent would have been recorded among said list in said archives.

34. These respondents further say that on February, A. D. 1793, the King of Spain, by his lawful authorities, made a grant to Lorenzo Rodriquez of 300 acres of the same lands claimed by the complainants to have been granted to Jose Fish in A. D. 1795, which grant was thereafter perfected and an official survey thereof made under authority of the Spanish Government, and the claim was duly filed for record under the laws of the United States for ascertaining claims to lands in East Florida, and was confirmed by the United States, surveyed as a private land claim by the United States as section 58 of township seven, range 30 east, and a patent therefor issued by the United States; that on July 3rd, A. D. 1802, the King of Spain, by his lawful authorities, made a grant to F. X. Sanchez of another part of the same lands claimed by
49 complainants to have been granted to Jose Fish in A. D. 1795, which grant was duly filed for record and confirmed by the United States, and surveyed as a private claim by the United States as section 59 of township seven, range 30 east; that both of said grants were made under the authority of the royal order of A. D. 1790, which required of the grantee settlement and cultivation and continuous possession of the lands granted for ten years to ripen into title; that both of said grants were held and occupied by the respective grantees and those claiming under them for many years continuously prior to the cession of Florida by Spain to the United States, and were so possessed at the date of the cession in A. D. 1821.

35. That the description of the lands in the alleged grant, if any there be, to Jose Fish, dated June 19th, A. D. 1795, as claimed in complainants' bill, is too vague to convey any title, the same not being otherwise described than as the "land which his father possessed, and is already

laid off, with the reserve of the quarries, and the remainder which was not granted to his father and which the King has reserved."

36. That the lands claimed by complainants in their bill to have been granted to Jose Fish were never segregated from the royal domain, and were not measured, bounded, platted, or otherwise located by any official survey while Florida remained a Spanish province, and were not identified by natural boundaries.

37. That any right which Jose Fish had to any part of the said island prior to A. D. 1784 could not accrue to the benefit of Jose Fish, his son, for the reason that Jose Fish, senior, was a British subject, and by the treaty between Spain and Great Britain in A. D. 1784 all property owned by British subjects in the Floridas not sold within eighteen
50 months to subjects of Spain was forfeited to the King; that by the Spanish archives delivered to the United States under the treaty of 1819 it appears that in A. D. 1792 Governor Quesada directed the piece of cultivated land called the "Grove," belonging to Jose Fish, of the English nation, who died under the Protestant religion, and whose son had returned to the dominions of His Britan'ic Majesty, should be sold because the Spanish laws forbade foreigners to hold real property unless they were established in the Spanish dominion; and it further appears that after a valuation of the land of the estate of the deceased, Jose Fish, the orange grove was, by order of the governor, sold to Jose Fish at three-fourths of its appraised value, and said sale was confirmed to said Jose Fish on the 26th day of March, A. D. 1795.

38. These respondents further say that the claimants under the alleged grant to Jose Fish set up in the bill paid no heed to the requirements of the act of Congress approved Feb. 8th, A. D. 1827, section 12, requiring all persons holding claims of over 3,500 acres to furnish information to the surveyor-general of public lands in Florida, to enable him to exhibit said claim on his township plats, or to have their claim surveyed, or to take any steps required that the lands claimed as private lands might be reserved from sale in the disposal of the public domain.

39. That on May 23, A. D. 1828, Congress confirmed all claims for lands in Florida recommended for confirmation by the boards of commissioners to the extent of a league square, and enacted that no more than a league square be confirmed in any grant, and no confirmation to be effectual until a full and final release by the claimant of all the lands claimed in any one grant in excess of a league square; authorizing
51 all persons whose claims had been presented to the board of commissioners, who were not willing to accept a league square as the area of the lands which could lawfully be granted by the authorities of the King of Spain, to present their titles to the district court of the United States for the district where the land lay within one year from the date of the act, and if not so presented to be forever barred, both at law and in equity, and that no other action at common law or proceeding in equity shall ever thereafter be sustained in any court whatever upon any claims within the purview of the act not so presented and prosecuted in said court.

40. That the claimants under Jose Fish for Anastasia Island never released the excess of a league square of their alleged grant; neither did they present their claim to the district court of the United States, as did all others having claims in Florida in excess of a league square; that

although bound to take notice of the laws of Congress for the greater protection of claimants, the legislative council of the Territory of Florida published the acts of May 23″, 1828, May 26″, 1830, and Feb. 8″, 1827, with the treaty with Spain for circulation in Florida, and though often notified of the limitation in said acts, the claimants under Jose Fish, under whom complainants claim to be the owners of the lands in controversy, spurned the bounty of the United States, tendered through repeated acts of Congress, and wholly neglected to advise those in authority representing the United States of their intention ever to claim said alleged grant of lands, and did wholly abandon and forfeit the same to the United States; and by the principles of the Spanish law, on which this cause of action is founded, the United States have
52 acquired title to the lands in controversy by prescription, even if it was private property at the date of the cession of Florida from Spain, which is not admitted.

41. That in A. D. 1833, having given public notice that unless the private claims within the district were presented to the surveyor-general he would survey the country as public lands of the United States, the claim of Jose Fish not having been presented, but having been wholly abandoned, the United States extended the public surveys over all of Anastasia Island, except the two Spanish grants to Rodriquez and Sanchez, and in A. D. 1839 advertised the said lands for sale as public lands, and on May 6″, A. D. 1851, the maps and plats of said lands surveyed as public lands were formally approved by B. A. Putnam, surveyor-general for Florida, all without protest or objection of any kind by those claiming under Jose Fish.

42. That in A. D. 1835 the United States began the construction of the sea wall at St. Augustine and continued work thereon continuously, or nearly so, until A. D. 1843; that said wall is built wholly of Coquina rock, taken from Anastasia Island by the United States, without compensation to any person and without objection from the heirs of Jose Fish or those under whom the complainants claim; that said sea wall is nearly a mile long, more than ten feet high, and seven feet thick; that the rock for the construction of the same was taken from the quarries located on the lands surveyed as sections 28, 33, & 34, in township seven, and other lands, said quarries extending several miles and embracing many hundred acres; that during all the time from A. D. 1835 to A. D. 1843 the United States was in the actual occupancy of said lands containing said quarries, and no adverse claim to the title and occupancy of the United States was set up by any person.

53 43. As alleged in said bill, the United States patented to the State of Florida certain lands in A. D. 1856, upon selections made by said State October 12th, A. D. 1855, as vacant public lands, and in A. D. 1867, 1868, and 1869, a large area of lands on Anastasia Island were entered under the homestead laws of the United States, and settled upon and improved, and wood cut therefrom and sold by said homestead settlers, all without objection or protest by the heirs of Jose Fish, and said homestead settlers resided on their several entries for a number of years consecutively, claiming a right and title thereto adverse to the claim of the heirs of Jose Fish.

44. That certain of said homestead settlers failed to make final proof of their homestead entries, but final proof of homestead and settlement

under the homestead laws for lands on said island was made and final certificates issued therefor by the United States to Tony Glenn and Sampson Gray in A. D. 1875, to William Twine in A. D. 1876, and to Darius Allen in A. D. 1882.

45. That in A. D. 1867, the board of trustees of the internal improvement fund of the State of Florida executed deeds of conveyance for lands on said island as follows: To A. D. Rogero for lots 2 and 3, section 29; to Hopkins and Rogero for lot 6, section 29, and to Magruder and Logan for lots 2 and 3, section 32, all in township seven, R. 30 east, being part of the lands so patented by the United States to the State of Florida; that a portion of the lands last above described had been in adverse possession of those claiming under Jose Fish, but these respondents aver that such possession was wholly without title to said lands save by occupancy, and that as to all other lands set forth in this bill there has been no occupancy adverse to the title of the United States.

54 46. That on September 16th, A. D. 1868, thirty-seven years after the time limited in the 8th section of the act of Congress approved May 26th, A. D. 1830, for the final settlements of claims to land in Florida, claimants under Jose Fish resuscitated their abandoned claim by the application of Mr. Venanceo Sanchez to the Land Department of the United States for the issuance of a patent upon the claim, and in A. D. 1870, thirty-five years after the lands had been surveyed as public lands the dormant interest of C. M. Furman in the claim became sufficient to advise the Land Department of the United States that he claimed to be owner of Anastasia Island under an alleged grant to Jose Fish prior to A. D. 1763, and to make application for the issuance of a patent from the United States to him.

47. That from A. D. 1831, to June 22, A. D. 1860, said claim was wholly barred; that on June 22, A. D. 1860, Congress again authorized claimants to present their claim, if an imperfect grant to commissioners to be recommended to Congress for confirmation, but if a complete grant (as contended by counsel for complainants on the argument of the demurrers filed by these respondents), then to the district court of the northern district of Florida; that those claiming under Jose Fish neglected to avail themselves of this further and renewed right to have the validity of their claim determined and the lands segregated from the public domain, but did apply to the Land Department of the United States for such adjudication; that after said application to the Land Department for an adjudication upon the validity of said claim under Jose Fish by said C. F. Furman in A. D. 1870, Congress extended the act of June 22, A. D. 1860, until June 10th, A. D. 1875, by the act approved June 10th, 1872; that by the second section of said act

55 no proof of title was required of claimants provided they, and those from whom they claimed had held continuous possession of the lands claimed, as they now in their bill allege; that the complainants having continuously refused to prosecute their claim when they might, and before the vesting of private rights in the lands claimed, ought not to be allowed to harrass the purchasers holding under title from the United States; and having submitted their claim to a tribunal of their own choice while this court was opened by Congress, they are now estopped to deny the jurisdiction of the tribunal to which they volunta-

rily submitted their rights and to seek an adjudication now by the same court they neglected to seek when they might.

48. That in June and July, A. D. 1888, the State of Florida applied at the land office at Gainesville to enter certain portions of the lands at the north end of said Anastasia Island, in township 7, R. 30 east, under the provisions of the act of June 9th, A. D. 1880, as vacant and unappropriated public lands; that because there was on file at said land office a letter from the Hon. Commissioner of the General Land Office, dated March 7th, A. D. 1883, advising that the island of Anastasia was claimed by C. M. Furman and that that said claim had not been adjudicated by the Land Department, the Register and Receiver rejected the selections of the State of Florida, and the State appealed from said decisions to the Hon. Commissioner of the General Land Office.

49. That in the then state of the matter it became the duty of the Land Department of the United States to ascertain whether Spain had disposed of the land in controversy before the session of Florida, and thereupon the claim of said C. M. Furman, filed in A. D. 1870,
56 was taken under advisement by the Hon. Commissioner of the General Land Office and briefs submitted by the State of Florida in support of its contention that said lands were public lands of the United States, and by the complainant, Charles M. Furman and others claiming under Jose Fish, in support of their contention that said lands were within a valid Spanish grant, and thereafter on August 2nd, A. D. 1890, the Hon. Commissioner of the General Land Office rendered his decision that the claimants under Jose Fish had failed to comply with the conditions imposed by Congress, and that the lands were public lands of the United States; thereupon the said complainants, Charles M. Furman and others took an appeal from said decision of said Commissioner to the Hon. Secretary of the Interior and submitted argument before said Secretary in support of their said contention that said lands were a valid Spanish grant, and on June 22, A. D. 1893, the Hon. Secretary of the Interior rendered his decision affirming the decision of the Commissioner of the General Land Office, that said claim had no validity; that said complainants failed to file any motion for a review of the said decision of the Secretary of the Interior, and said decision became final, and is a complete and final adjudication of the title of complainants; that said claimants having presented their claim to a competent tribunal having jurisdiction, and said tribunal having finally adjudicated the matter adversely to their claim and title, said complainants are estopped to set up any further claim to said lands or to question the patents issued therefor by the United States, and these respondents aver that there has been a final adjudication by the Land Department of the United States, that the lands in controversy are public lands subject to disposal by the United States.

57 50. That said claimants secured from the Senate of the United States, in the 52 Congress, and also in the 53 Congress the passage of a resolution requesting the Secretary of the Interior to take no action in respect to admitting claims under the laws of the United States to lands on Anastasia Island during the cession of the respective Congresses and in deference to such unusual and improper request for suspension of the duties of an executive department, the Secretary refused to proceed until the final adjournment of said 53 Congress; that in the 53

Congress the claimants secured the introduction of a bill for confirmation and release to them by the United States of the lands on Anastasia Island, as claimed under Jose Fish, but Congress refused to favorably consider the same.

51. These respondents deny that complainants are in possession of any part of the lands on Anastasia Island, and they are advised and believe that said lands of the Fish homestead have been possessed adversely to said complainants since A. D. 1876, that a large portion of Anastasia Island is in the possession of persons claiming title under the United States, and adversely to the claim of complainants, that one Harrington is in possession of some part thereof, claiming some right or title under the United States; that one W. R. Stokely is in the possession of another part thereof, claiming some title or right under the United States; that one Harry Stokely is in the possession of another part thereof, claiming some title or right under the United States; that one Genung is in possession of another part thereof, claiming some right or title under the United States; that one Welch is in possession by entry under the homestead laws of another part thereof; that one Middleton is in the pos-
ses'ion of another part thereof, claiming under one Twine, who
58 made entry and settlement under the homestead laws in A. D.
1869; that Cathrine Ruggles is in possession of another part thereof, claiming under Darius Allen, who made homestead entry and settlement in A. D. 1876; and there are many others, to these respondents unknown, who are in the actual possession and occupancy of portions of said Anastasia Island, claiming to hold the same under title from the United States and adversely to complainants.

52. That the St. Augustine and South Beach Railway Company is in possession of a roadbed and right of way across said island, through sections 17–21–27 and 28, in township 7, R. 30 east, under authority of the act of Congress, approved March 3, A. D. 1875, granting a right of way over the public lands of the United States.

53. That lot 1, sec. 21, was reserved for light-house purposes by order of the President dated June 22, 1869; that a part of lot 2, sec. 21, township 7, R. 30, was declared a reservation for light-house purposes by Executive order dated Feb. 1st, 1883, and thereafter by a like order the remainder of said lot 2 was declared a United States reservation for light-house purposes; that by Executive order dated May 4th, A. D. 1893, the President reserved 700 acres of land in sections 21–22–27 and 28, of township 7, south of range 30 east for military purposes.

54. That the requir'ment by Congress that all claimants under grants from the King of Spain in the Floridas shall relinquish all in excess of a league square of the lands claimed in any one grant, was a declaration of the policy of the political department of the United States as to
the territory acquired from a foreign power and a determination
59 by Congress of the extent of the obligation on the United States
imposed by the treaty with Spain, and is not reviewable by any court.

55. That the lands described in complainants' bill have never been confirmed or surveyed or a patent issued thereon as private lands, and were and are subject to patent as part of the public domain; that by the 2nd section of the act of May 23, 1828, Congress provided that claimants of grants for lands in excess of a league square should relea*e* all claim

to the residue over a league square, and thereafter the excess in said grants should be liable to be sold as other public lands of the United States; and these respondents aver that a failure to release the excess over a league square of the said claim of 10,000 acres forfeited the entire claim, and that without any release the excess over a league square of said 10,000 acres was subject to sale as public lands.

56. That the issuance of the patents admitted by the bill depended upon the existence of the fact that those claiming the lands as a Spanish grant had failed to comply with the laws of the United States or the fact that Spain had not disposed of the lands in controversy before the cession of Florida, and the Land Department of the United States has determined that one or more of said facts exist that by the survey of the lands of Anastasia Island as public lands, and their offer for sale by repeated proclamations of the President, and confirmation of portions thereof to the State of Florida by patent, the reservation of portions thereof by Executive order and the opening of all to homestead entry, the United States has become seized of the whole of said Anastasia Island by the equivalent of office found.

60 57. These respondents further say that the bill in its averments attacks the title and possession of the United States to the reservations of the United States declared by Executive authority on said island and the public lands there not patented, and collaterally attacks the approved surveys made by authority of the United States; that the title set up by the bill is an inchoate title derived from a foreign nation, and no jurisdiction had been conferred by Congress upon any court to hear or maintain such a title.

58. And these respondents say that anything in said bill material for them to answer and not herein sufficiently answered, confessed, traversed, avoided or denied, is not true to the knowledge of these respondents, all which things these respondents are ready and willing to prove as this court may direct; and these respondents submit to this honorable court that all and every the matters and things in said complainants' bill mentioned and complained of are matters which have been fully determined by a coordinate branch of this Government, and with respect to which the complainants are not entitled to any relief from a court of equity, and these defendants hope they shall have the same benefit of this defense as if they had presented the same by plea to said complainants' bill, although this answer is put in without verification because complainants, being unwilling that the same should be evidence in the cause, have waived an answer under oath.

And they pray for their reasonable costs and charges.

W. W. DEWHURST,
Defendants' Solicitor.

(Endorsed:) Charles M. Furman et al. vs. Henry L. Mitchell et al. Answer of Trustees & Cummings. Filed Feb. 27th, 1896. E. O. Locke, clerk. W. W. Dewhurst, def'ts' sol.

61 In the circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL., COMPLAINANTS,
vs.
HENRY L. MITCHELL ET AL., DEFENDANTS.

The joint and separate answer of the St. Johns Railway Company, a corporation organized and incorporated under the laws of the State of Florida, and the Florida Coast Line Canal & Transportation Company, a corporation organized and incorporated under the laws of the State of Florida, defendants, to the amended bill of complaint of Charles M. Furman and others, complainants.

These respondents, reserving all manner of exception to the errors and uncertainties in said bill, for answer to so much thereof as is material for them to answer, say:

2. They deny that complainants own and hold title in fee simple to that tract of land lying and being in St. Johns County, State of Florida, within townships 7, 8, and 9 south, of range 30 east, known as Anastasia or St. Anastasia Island, excepting therefrom what was known at the time of the alleged Spanish grant in said bill claimed to have been made as the "Kings Quarries."

3. They deny that the "Kings Quarries," as the same were known and bounded on or about the year A. D. 1795, were about 200 acres, lying on the east of the old King road between the same and the old lighthouse.

62 4. They deny that the lands in controversy are wholly without the boundaries of the Kings Quarries as they existed on or about the year A. D. 1795.

5. They aver that the Kings Quarries, under the Spanish ownership and control of the Floridas, embraced many hundred acres of the lands of Anastasia Island, and nearly all the lands of said island which under the authority of the United States were surveyed as public lands in township 7 south, of range 30 east.

6. They deny that Anastasia Island was granted by the Government of Spain to Jose Fish or Joseph Fish, about the 19th day of June, A. D. 1795, or at any other time, or that the title to the lands in controversy was ever granted by the King of Spain or his lawful authorities; and they aver the only part of Anastasia Island the title to which was ever granted by the King of Spain or his lawful authorities is a tract of about 300 acres granted to Lorenzo Rodriquez in A. D. 1793, and a tract of about twenty acres granted to F. A. Sanchez in A. D. 1802, both of which tracts have been confirmed by the United States, and surveyed and platted as private grants upon the maps and plats of the Land Department of the United States.

7. They deny that the treaty with Spain ratified by the United States the 19th day of February, A. D. 1821, ratified and confirmed any grant of the lands in controversy in this suit, to the ancestor of the complainants, or gave title thereto to any other person save only the United States of America as the successor of the King and the General Cortes of Spain.

8. They deny that Joseph Fish died about the year A. D. 1798, and aver, on information and belief, that he was living in A. D. 1803.

63 9. They deny that Sarah Warner Fish died intestate, leaving a sole heir at law, and aver, on information and belief, that she left a last will and testament, executed in due form of law, and they are advised that said last will was probated in the State of South Carolina, and a copy thereof duly probated in the probate office for St. Johns County, Florida.

10. They are not advised as to the line of descent set out in the bill, save that they have been advised that Gabriel W. Perpall married a sister of Joseph Fish and daughter of Sarah Fish, and that there were two daughters born, issue of that marriage, and they leave complainants to make such proof of descent from the common ancestor, Joseph Fish, as they may be advised.

11. They aver that the alleged deeds of conveyance of said Anastasia Island set out on the third and fourth pages of complainants' bill, if any such were ever executed and delivered, of which these defendants are ignorant and demand strict proof thereof, are void and convey no title to said lands, and that said alleged grantors were not in possession of the lands alleged to have been conveyed at the date of said alleged deeds, but that the same were in the adverse possession of the United States and those claiming thereunder.

12. They deny that Joseph Fish was placed in possession of Anastasia Island, or of Anastasia Island except the Kings Quarries, as a grant of the said lands to him, by the King of Spain or his lawful authorities.

13. They deny that Joseph Fish resided on Anastasia Island from A. D. 1795 until his death; they deny that from A. D. 1795 to the date of his death he exercised such acts of possession of the whole of Anastasia Island, except the Kings Quarries, as it was capable of,

64 under claim of title, or that he claimed title as owner of said island, except the Kings Quarries.

14. They deny that from the time of the death of Joseph Fish until the filing of this bill those claiming under said Anastasia Island under the said Fish, by themselves or their agents have occupied the Fish homestead on Anastasia Island, and cultivated the fields thereon, used the woodland for fuel supply and fencing timber and exercised such acts of possession and ownership of the said property as the same was capable of under the said claim of title thereof, as is alleged in said bill.

15. They aver that if all the allegations of occupancy and acts of possession alleged in the bill were true, it is immaterial to establish title to any other lands than those embraced in the Fish homestead; that the Fish homestead was a point of land on the extreme west shore of Anastasia Island, nearly surrounded by water and cut off from the main island of Anastasia; and embraces about 100 acres of land, and is well known by general reputation as "Fish's Island."

16. They admit the United States patented to the State of Florida the several tracts of land described in said bill, and the authority of the said defendants, the Trustees of the Internal Improvement Fund of the State of Florida, to take, hold, and convey the title so conveyed by the United States.

17. They admit that the lands patented by the United States to the State of Florida on the 27th day of June, A. D. 1895, namely, 393 and 30-100

acres, and on April 8th, 1895, namely, 120 acres, were acquired under the act of Congress approved June 9th, A. D. 1880, and they aver that before any patent could be issued for these lands the State of Florida was required to establish before the Land Department of the United States that the lands were vacant and unappropriated public lands
65 of the United States; that Charles M. Furman, in behalf of these complainants, appeared before said tribunal and contested the matter and presented and argued their said claim to the same under the same title set up in their said bill, and that there was a final determination before said tribunal, with authority under the laws of the United States to decide, admitted by these claimants, which was adverse to the claim of said complainants herein, and that said lands were not private lands.

18. They admit that, in addition to the lands so patented to the State of Florida under said act of Congress approved June 9th, A. D. 1880, the said State has selected the lands as set out in said bill, $367\frac{32}{100}$ acres and that the entries of such selections have been allowed by the Commissioner of the General Land Office of the United States, and that the same are held to be patented to the State of Florida under the act of June 9th, A. D. 1880.

19. They aver that such allowance and holding for patent by the Commissioner of the General Land Office as set forth in said bill is an adjudication by a competent tribunal that the lands are public lands of the United States; that such adjudication before the issuance of a patent is subject to review in said Department and correction if erroneous.

20. They deny that the patents from the United States and the said deeds and entries and selections of the State of Florida, whereby the defendants claim title to the lands in controversy are invalid and do not vest title in the defendants.

21. They aver that the United States at the time of the issuance of such patents did have title to said lands, and deny that the title to said lands, or any title to said lands, is in the complainants.

22. They deny that defendants are out of possession of the lands in controversy, and they aver that the several defendants are in possession of the several tracts of land by them claimed as owners thereof.
66 23. They deny that this controversy so involves the construction of the treaty between Spain and the United States as to give this court jurisdiction, or that this court has such jurisdiction of the parties or subject matter as to enable it lawfully to proceed herein. And they aver that complainants in their said bill have set out as their title an incipient and inchoate title under the "Government of Spain" not cognizable in the courts of this Government until recognized or confirmed by the Congress of the United States; that by the rules established in the territory of Florida by the authority of the King of Spain for the granting of lands, a grant from the Government of Spain signifies only the first concession of right of occupancy of the royal domain; that perfect or complete grants were recognized by the treaty with Spain, but incomplete grants were ratified by the treaty to the same extent they would have been valid had the territory remained under the King of Spain; that if there had been a complete grant of Anastasia Island at the date of the treaty, the owners thereof were authorized under the laws of the United States to have the same surveyed without expense as a private claim by the United States, but by the averments of their

said bill complainants show that said lands have been surveyed as public lands.

24. They deny that the patents, entries, and deeds issued and secured to defendants by the United States are clouds upon the title of complainants.

25. They deny that Charles M. Furman, complainant, was, at the time of the filing of said bill of complaint or is now, the administrator de bonis non cum testamento of Charles M. Furman, late of South Carolina, deceased, as to the estate of said deceased in Florida, and aver
67 that said complainant as such administrator has no authority or lawful right to bring or maintain said bill of complaint.

26. That the chancellor may be advised of all the pertinent facts of this suit so far as known to these respondents and for all the proper purposes of defense herein, they say that Anastasia Island is a barrier of the sea, consisting chiefly of high sand hills blown in from the seabeach, covered with "scrub," a low growth of hard wood; that through the center of the northern part, in township 7, there runs north and south a ledge of coquina rock from one-half to three-quarters of a mile wide; that a large portion of the lands are barren and wholly unfit for any purpose whatever save seashore residence, and of no value apart from their proximity to a city patronized as a winter resort; that on the western shore of said island, nearly separated from the main island by a strip of low ground or "swale," is a neck of land called Fish's Island, containing about 60 to 100 acres, which is arable land, and on this point was an orange grove and cultivated fields of about thirty acres under enclosure, and houses and outbuildings, which improvements have long since been destroyed or gone to decay.

27. That complainants or their ancestor have never been in the possession of Anastasia Island; that of the lands described in complainants' bill they never had any right or title to any, except possibly a part of lots 2, 3, and 6, of section 29, township 7, range 30 east, which embraced the orange grove or Bergal plantation, alleged to have been sold by the Spanish Government in probate proceedings upon the estate of Jose Fish about March 21st, A. D. 1792; that to this Bergal plantation the heirs of Jose Fish might have had an equitable title, which,
68 although the same was never surveyed or in any way defined in area or bounds at the sale or by the Spanish Government, by confirmation by the United States as the successor of the King of Spain, might have been perfected into a legal title; that as against the United States these claimants and their ancestor and predecessors in title have forfeited any right they may have had by failure to so present, record, and have surveyed their claim to the said lands so purchased, and by their failure under their claim to the said lands so purchased, and by their failure under the Spanish control of the Floridas to have an official survey, plat, and segregation from the royal domain of the lands claimed to have been appraised and sold at said probate sale as the Bergal plantation, the alleged property of Jose Fish, senior.

28. They aver that the lawful authorities of the King of Spain delivered to the authorities of the United States of America in A. D. 1821, at the transfer of sovereignty of the Territory of East Florida and of the public property, lots and buildings of the King of Spain, the lands in controversy in this suit as a part of the royal domain, and that the

authorities of the United States then went into the actual occupancy of a part of said lands, and the possession of the whole of Anastasia Island, save two Spanish grants, one to Rodriques and the other to F. X. Sanchez.

29. That if Jose Fish acquired any title to the island of Anastasia under the alleged grant of the 19th of June, A. D. 1795, which these respondents deny, the King of Spain annulled said grant prior to the cession of Florida to the United States, having full power to do so.

30. That on June 19th, A. D. 1795, the only law, ordinance, or decree of the Spanish Government then in force in the Floridas vesting in the Spanish governors power to make grants of lands was the royal
69 order of 1790; that under same royal order Governor Quesada, Spanish governor of East Florida, in A. D. 1795, required ten years of continued and uninterrupted possession before a full title was granted to the claimant who upon the petition had received a grant or concession and had been put in possession of lands, and by proclamation dated St. Augustine, September 2nd, A. D. 1790, declared that although the laws of the Indies authorized him to make absolute titles to the lands of the province he abstained therefrom, but would forward to the King his recommendation, persuaded that those obtaining grants from him would be confirmed in the possession of the same; and by proclamation dated November 20th, 1790, the same governor declared that the grants of land be 100 acres for the father of a family and 50 acres to each white person, or of color, of which said family is composed, but if a greater quantity could be cultivated they shall obtain an additional thousand acres, and reserving to the Government the right of absolute privation; that instructions for the survey of lands and for recording upon oath the members of the family of grantee, with information that certain conditions must be performed before the claimants could consider themselves owners in absolute right, was issued to Pedro Marrot, surveyor-general, in October 24, 1791; that by order of Governor White, promulgated St. Augustine, October 12th, A. D. 1803, it was provided that all persons, though they had obtained the corresponding title of property from the notary's office, shall lose the right to the same, and they be granted to others upon proof of their being uncultivated at least two years.

31. These respondents say that Jose Fish never acquired any title or right to Anastasia Island; that the lands on Anastasia Island in controversy in this suit were almost wholly not susceptible of cultivation, and were never cultivated by Jose Fish or any other person;
70 that the family of Jose Fish in A. D. 1795, or thereafter, did not consist of 200 persons nor of any considerable number of persons; that no person except the governor of the province was entitled to make grants of lands under the Spanish law; that if any other person had authority to make grants the titles so granted were incipient until confirmed by the governor; that by failure to perfect his title within the time prescribed by the royal ordinance the said Jose Fish, if he had received any concession of Anastasia Island, would be considered under the Spanish law as having abandoned all claim to the lands conceded. These respondents further say they are advised, and allege on information and belief, that any proceedings purporting to be a concession for 10,000 acres, dated June 19th, 1795, to Jose Fish, found among the

archieves delivered by Spain to the United States at the cession of Florida are forgeries; that if not forgeries, they will be found to be so irregular and at variance from the regular and legal forms used in making grants of land under the Spanish authority as to cause such doubt upon their genuineness and force as records of conveyance as would preclude their use before any tribunal as evidence of title; that respondents are advised and so aver that any claim which Jose Fish ever had will be found to be an illegal grant purporting to be signed by one Morales, the commandant of the 3rd Battalion of Cuba, and not by the governor, an unheard of anomolous proceeding under Spanish law, without authority and not found in any other claim for lands under Spanish Government; that no authority existed in Morales to make a grant of lands under the King of Spain, and no other title or claim to lands in East Florida, save the claim of Jose Fish, is based upon a grant from Morales; that while by
71 the Spanish regulations for the granting of lands the party receiving a concession of land from the governor was required to have an official survey thereof made by the Government officer designated, the surveyor-general, which survey in the original was filed in the official records of the Government and a certified copy given the claimant, if said Jose Fish has any record of a delivery of possession of any lands on Anastasia Island to him, these respondents aver it to be wholly irregular and insufficient for the purpose; that if said Jose Fish can produce any paper title to the lands in controversy, which is denied by these respondents, these respondents aver it is not in the form used in making grants and contains no words of grant according to the Spanish custom and the words employed in Spanish grants which intends to sever lands from the royal domain and convey a legal title, and to be unlike any grant found in the archives or records of land titles in Florida, not to be in the name of the King or even in the name of the governor, and with no recitation as made under or by virtue of any royal order, or by virtue of any law, ordinance, or regulation valid under the laws of Spain.

32. These respondents, further answering, say that if Jose Fish ever acquired any right or title to Anastasia Island he afterwards relinquished it to the Spanish Government, and that he took a royal title to other lands as a settler under the royal order of 1790; that it was not possible for Jose Fish to have acquired two separate detached parcels of land as a settler under the Spanish laws; that a real title or patent was granted by Governor Copinger to the heirs of Jose Fish on April 24th, A. D. 1819, for five hundred acres of land on the west bank of the Matanzas River, about 20 miles south of St. Augustine, under a concession under the royal order of 1790 to said Jose Fish dated April 1st, A. D. 1791; that Quesada was governor of East Florida on the 19th day of June, A. D. 1795.

72 33. These respondents further say that archives and documents which relate to property in Florida while a province of Spain, both public and private, were turned over by Spain to the United States; that among said archives was a complete list of all real titles or patents for lands granted by the lawful authorities of the King of Spain in East Florida; that by said list it appears that no patent or complete title ever was issued for the lands of Anastasia Island to Jose Fish; and these respondents aver that if said Jose Fish had received a complete title to

said lands or any part thereof his real title or patents would have been recorded among said list in said archives.

34. These respondents further say that on February, A. D. 1793, the King of Spain by his lawful authorities made a grant to Lorenzo Rodriques of 300 acres of the same lands claimed by complainants to have been granted to Jose Fish A. D. 1795, which grant was thereafter perfected and an official survey thereof made under authority of the Spanish Government; and the claim was duly filed for record under the laws of the United States for ascertaining claims to lands in East Florida, and was confirmed by the United States, surveyed as a private land claim by the United States as section 58 of township 7, range 30 east, and patent therefor issued by the United States; that on July 3rd, A. D. 1802, the King of Spain, by his lawful authorities, made a grant to F. X. Sanchez of another part of the same lands claimed by complainants to have been granted to Jose Fish in A. D. 1795, which grant was duly filed for record and confirmed by the United States, and surveyed as a private claim by the United States as section 59 of township 7, range 30
73 east; that both of said grants were made under the authority of the royal order of A. D. 1790, which required of the grantee settlement and cultivation and continuous possession of the lands granted for ten years to ripen into title; that both of said grants were held and occupied by the respective grantees and those claiming under them for many years continuously prior to the cession of Florida by Spain to the United States, and were so possessed at the date of the cession in A. D. 1821, and for many years thereafter, and has never been in the adverse possession of complainants; that those claiming under said Rodriques and Sanchez are necessary parties to this bill of complaint, but have not been made parties.

35. That the description of the lands in the alleged grant, if any there be, to Jose Fish, dated June 19th, A. D. 1795, as claimed in complainants' bill, is too vague to convey any title, the same not being otherwise described than as the "land which his father possessed, and is already laid off with the reserve of the quarries, and the remainder which was not granted to his father and which the King has reserved."

36. That the lands claimed by complainants in their bill to have been granted to Jose Fish were never segregated from the royal domain, and were not measured, bounded, platted, or otherwise located by any official survey while Florida remained a Spanish province and were not identified by natural boundaries.

37. That any right, title, claim, or demand soever of Jose Fish to any portion of the land set forth in the bill of complaint herein was
74 and is dependent upon the right or interest which his father, Jose Fish, senior, had in said land prior to the treaty between Spain and Great Britain in A. D. 1784; that said Jose Fish and his father were each British subjects; that in and by the provisions of said treaty all property owned by British subjects in the Floridas not sold within eighteen months to subjects of Spain was forfeited to the King of Spain; and that these respondents are advised and so affirm that no portion of said property was sold by said Fish, senior, to subjects of Spain within said eighteen months, or at any time.

38. These respondents further say that the claimants under the alleged grant to Jose Fish set up in the bill paid no heed to the requirements of

the act of Congress, approved February 8th, A. D. 1827, section 12, requiring all persons holding claims of over 3,500 acres to furnish information to the surveyor-general of public lands in Florida, to enable him to exhibit said claim on his township plats, or to have their claim surveyed, or to take any steps required that the lands claimed as private lands might be reserved from sale in the disposal of the public domain.

39. That on May 23rd, A. D. 1828, Congress confirmed all claims for lands in Florida recommended for confirmation by the board of commissioners to the extent of a league square, and enacted that no more than a league square be confirmed in any grant, and no confirmation be effectual until a full and final release by the claimant of all the lands claimed in any one grant in excess of a league square, authorizing all persons whose claims had been presented to the board of commissioners who were not willing to accept a league square as the area of the lands which could lawfully be granted by the authorities of the King of
75 Spain to present their titles to the district court of the United States for the district where the land lay, within one year from the date of the act, and if not so presented to be forever barred both at law and in equity, and that no other action at common law or proceeding in equity should ever thereafter be sustained in any court whatever, upon any claims within the purview of the act, not so presented and prosecuted in said court.

40. That the claimants under Jose Fish for Anastasia Island never released the excess of a league square of their alleged grant, neither did they present their claim to the district court of the United States, as did all others having claims in Florida in excess of a league square; that although bound to take notice of the laws of Congress for the greater protection of claimants, the legislative council of the Territory of Florida, published in the acts of May 23, 1828, May 26, 1830, and February 8, 1827, with the treaty with Spain for circulation in Florida, and though often notified of the limitation in said acts, the claimants under Jose Fish, under whom complainants claims to be the owners of the lands in controversy, spurned the bounty of the United States, tendered through repeated acts of Congress, and wholly neglected to advise those in authority representing the United States of their intention ever to claim said alleged grant of lands, and did wholly abandon and forfeit the same to the United States; and by the principles of the Spanish law, on which this cause of action is founded, the United States have acquired title*d* to the lands in controversy by prescription, even if it was private property at the date of the cession of Florida from Spain, which is not admitted.

76 41. That in A. D. 1833, having given public notice that unless the private claims within the district were presented to the surveyor-general he would survey the country as public lands of the United States, the claim of Jose Fish not having been presented but having been wholly abandoned, the United States extended the public surveys over all of Anastasia Island except the two Spanish grants to Rodriquez and Sanchez, and in A. D. 1839 advertised the said lands for sale as public lands, and on May 6, A. D. 1851, the maps and plans of said lands surveyed as public lands were formally approved by B. A. Putnam, surveyor-general for Florida, all without protest or objection of any kind by those claiming under Jose Fish.

42. That in A. D. 1835 the United States began the construction of the sea wall at St. Augustine and continued work thereon continuously, or nearly so, until A. D. 1843; that said wall is built wholly of coquina rock taken from Anastasia Island by the United States without compensation to any person and without objection from the heirs of Jose Fish or those under whom the complainants claim; that said sea wall is nearly a mile long, more than ten feet high, and seven feet thick; that the rock for the construction of the same was taken from the quarries located on the lands surveyed as sections 28, 33, and 34, in township 7, and other lands, said quarries extending several miles and embracing many hundred acres; that during all the time from A. D. 1835 to A. D. 1843 the United States was in the actual occupancy of said lands containing said quarries, and no adverse claim to the title and occupancy of the United States was set up by any person.

43. As alleged in said bill, the United States patented to the State
77 of Florida certain lands in A. D. 1856, upon selections made by said State October 12th, A. D. 1855, as vacant public lands, and in A. D. 1867, 1868, and 1869 a large area of lands on Anastasia Island were entered under the homestead laws of the United States and settled upon and improved, and wood cut therefrom and sold by said homestead settlers, all without objection or protest by the heirs of Jose Fish, and said homestead settlers resided on their several entries for a number of years consecutively, claiming a right and title thereto adverse to the heirs of Jose Fish.

44. That certain of said homestead settlers failed to make final proof of their homestead entries, but final proof of homestead and settlement under the homestead laws for lands on said island was made and final certificates issued therefor by the United States to Tony Glenn and Sampson Gray in A. D. 1875, to William Twine in A. D. 1876, and to Darius Allen on A. D. 1882, but none of said homesteaders or those claiming under them are made defendants herein, and the title to the property here in question cannot be fully adjudicated without their being made parties herein.

45. That in A. D. 1867 the board of trustees of the internal improvement fund of the State of Florida executed deeds of conveyance for lands on said island as follows: To A. D. Rogero for lots 2 and 3, section 29; to Hopkins and Rogero for lot 6, section 29; and to McGruder and Logan for lots 2 and 3, section 32; all in township 7, range 30 east, being part of the lands so patented by the United States to the State of Florida, but none of said grantees or those claiming under them are made defendants herein, and the title to this property here in question cannot be fully adjudicated without their being made parties herein.

46. That on September 16th, A. D. 1868, 37 years after the
78 time limited in the 8th section of the act of Congress, approved May 26th, A. D. 1830, for the final settlements of claims to land in Florida, claimants under Jose Fish resuscitated their abandoned claim by the application of Mr. Venancio Sanchez to the Land Department of the United States for the issuance of a patent upon the claim, and in A. D. 1870, 35 years after the lands had been surveyed as public lands, the dormant interest of C. M. Furman in the claim became sufficient to advise the Land Department of the United States that he claimed to be

the owner of Anastasia Island under an alleged grant to Jose Fish prior to A. D. 1763, and to make application for the issuance of a patent from the United States to him.

47. That from A. D. 1831 to June 22nd, A. D. 1860, said claim was wholly barred; that on June 22nd, A. D. 1860, Congress again authorized claimants to present their claim, in an imperfect grant, to commissioners to be recommended to Congress for confirmation, but if a complete grant (as contended by counsel for complainants on the argument of the demurrers filed by these respondents), then to the district court of the northern district of Florida; that those claiming under Jose Fish neglected to avail themselves of this further and renewed right to have the validity of their claim determined and the lands segregated from the public domain, but did apply to the Land Department of the United States for such adjudication; that after said application to the Land Department for an adjudication upon the validity of the said claim under Jose Fish by said C. F. Furman, in A. D. 1870, Congress extended the act of June 22nd, A. D. 1860, until June 10th, A. D. 1875, by the act approved June 10th, 1872; that by the second section of said act no proof of title was required of claimants provided they and those
79 from whom they claimed had held continuous possession of the lands claimed, as they now in their bill allege; that the complainants having continuously refused to prosecute their claim when they might, and before the vesting of private rights in the lands claimed, ought not to be allowed to harrass the purchasers holding under title from the United States, and having submitted their claim to a tribunal of their own choice while this court was open by Congress, they are now estopped to deny the jurisdiction of the tribunal to which they voluntarily submitted their rights, and to seek an adjudication now by the same court they neglected to seek when they might.

48. That in June and July, A. D. 1888, the State of Florida applied at the land office at Gainesville to enter certain portions of the lands at the north end of said Anastasia Island, in township 7, range 30 east, under the provisions of the act of June 9th, A. D. 1880, as vacant and unappropriated public lands; that because there was on file at said land office a letter from the Hon. Commissioner of the General Land Office, dated March 7th, A. D. 1883, advising that the island of Anastasia was claimed by C. M. Furman, and that the said claim had not been adjudicated by the Land Department, the register and receiver rejected the selections of the State of Florida, and the State appealed from said decisions to the honorable Commissioner of the General Land Office, who had authority under the laws of the United States to review and pass upon such action of said register and receiver.

49. That in the then state of the matter it became the duty of the Land Department of the United States to ascertain whether Spain had finally disposed of the land in controversy before the cession of Florida, whether said land had been so disposed of as to be beyond the authority and control of Congress and the proper tribunals of the
80 United States, as the presentation and confirmation of the alleged grant thereof to Jose Fish, as provided by the several acts of Congress aforesaid, and whether patent was proper to be issued to those claiming under Jose Fish as prayed by them, or that title to said land

was in the United States and that the said selections of the State of Florida should be allowed; and thereupon the claim of said C. M. Furman, filed in A. D. 1870, was, upon said appeal, taken under advisement by the honorable Commissioner of the General Land Office at Washington, D. C., and evidence, briefs, and arguments were submitted by the State of Florida in support of its contention that said lands were public lands of the United States and by the complainant, C. M. Furman, and others, claiming under said Jose Fish, in support of their contention that said lands were within a valid Spanish grant the title to which remained in them; and thereafter, on August 2nd, A. D. 1890, the honorable Commissioner of the General Land Office rendered his decision that the claimants under Jose Fish had failed to comply with the conditions imposed by Congress and that the lands were public lands of the United States; thereupon the said complainants, C. M. Furman and others, took an appeal from said decision of said Commissioner to the honorable Secretary of the Interior and submitted arguments before said Secretary in support of their said contention, and on June 22nd, 1893, the honorable Secretary of the Interior rendered his decision affirming the decision of the Commissioner of the General Land Office as aforesaid, whereby it was adjudicated that it was necessary that those claiming title under the alleged grants to said Jose Fish should have followed the general statutory enactments providing for the presentation and confirmation of Spanish grants and concessions and that the Departments, as well as the courts, are
81 bound thereby, even though it be conceded that such enactments are in violation of treaty obligations, and that said statutory enactments required said parties, or those under whom they claimed, to present to the board of commissioners for confirmation or to Congress for final action such claim, whether it was founded upon a perfect grant or incomplete title, and that such claim, if not finally acted upon by Congress, should have been brought into the courts for adjudication, and that such claim, not having been confirmed by the Commissioner or by Congressional action or asserted in the courts within the period provided by law therefor, was barred; that said complainants failed to file any motion for a review of the said decision of said Secretary of the Interior and said decision became final, and is a complete and final adjudication of the title of said complainants, and covers all and singular the questions now attempted to be raised in and by the bill of complaint herein; that said complainants having presented their claim to a competent tribunal having jurisdiction and said tribunal having finally adjudicated the matter adversely to their claim and title, said complainants are estopped to set up any further claim to said lands or to question the patents issued therefor by the United States, and these respondents aver that there has been a final adjudication by the Land Department of the United States, that the lands in controversy are public lands subject to disposal by the United States.

50. These respondents deny that complainants are or have been in possession of any part of the lands on Anastasia Island, and they are advised and believe that said lands of the Fish homestead have been possessed adversely to said complainants since A. D. 1876; that
82 a large portion of Anastasia Island is in the possession of persons claiming title under the United States and adversely to the claims

of complainants; that one Harrington is in possession of some part thereof, claiming some right or title under the United States; that one W. R. Stokely is in the possession of another part thereof, claiming some title or right under the United States; that one Harry Stokely is in the possession of another part thereof, claiming some title or right under the United States; that one Genung is in possession of another part thereof, claiming some right or title under the United States; that one Welch is in possession by entry under the homestead laws of another part thereof; that one Middleton is in possession of another part thereof, claiming under one Twine, who made entry and settlement under the homestead laws in A. D. 1869; that Cathrine Ruggles is in possession of another part thereof, claiming under Darius Allen, who made homestead entry and settlement in A. D. 1876; and there are many others to these respondents unknown who are in the actual possession and occupancy of portions of said Anastasia Island, claiming to hold the same under title from the United States and adversely to complainants; that none of said parties have been made defendants herein, but are necessary parties to this cause.

51. That the St. Augustine and South Beach Railway Company is in possession of a roadbed and right of way across said island through sections 17, 21, 27, and 28, in township 7, range 30 east, under authority of the act of Congress approved March 3, A. D. 1875, granting a right of way over the public lands of the United States, and that said railway company is a necessary party to this cause.

52. That lot 1, section 21, was reserved for light-house purposes by order of the President, dated June 22, 1869; that a part of lot 2, section 21, township 7, range 30, declared a reservation or light-house by
83 Executive order dated February 1st, 1883, and thereafter by a like order the remainder of said lot 2 was declared a United States reservation for light-house purposes; that said lands so reserved have for many years been occupied by the United States and are now so occupied; that by Executive order dated May 4th, A. D. 1893, the President reserved 700 acres of land in sections 21, 22, 27, and 28, of township 7 south, of range 30 east, for military purposes, and that the title to all reserved land will be affected by any decree made in this cause.

53. That the requirement of Congress that all claimants under grants from the King of Spain in the Floridas shall relinquish all in excess of a league square of the land claimed in any one grant, was a declaration of the policy of the political department of the United States as to the territory acquired from a foreign power and a determination by Congress of the extent of the obligation on the United States imposed by the treaty with Spain, and is not reviewable by any court.

54. That the lands described in complainant's bill have never been confirmed or surveyed or a patent issued thereon as private lands, and were and are subject to patent as part of the public domain; that by the second section of the act of May 23, 1828, Congress provided that claimants of grants for lands in excess of a league square should execute release of all claims to the residue over a league square, and thereafter the excess in said grants should be liable to be sold as other public lands of the United States; that neither said Jose Fish or those claiming under him ever executed said release; and these respondents aver that a

failure to release the excess over a league square of the said claim of 10,000 acres forfeited the entire claim, and that without any release the excess over a league square was subject to sale as public lands.

84 55. That the issuance of the patents admitted by the bill depended upon the existence of the fact that those claiming the lands as a Spanish grant had failed to comply with the laws of the United States or the fact that Spain had not disposed of the lands in controversy before the cession of Florida, and the Land Department of the United States has determined that one or more of said facts existed; that by the survey of the lands of Anastasia Island as public lands, and their offer for sale by repeated proclamation of the President and confirmation of portions thereof by Executive order and the opening of all to homestead entry, the United States has become seized of the whole of said Anastasia Island by the equivalent of office found.

56. That because of the failure and refusal of those claiming under said Jose Fish to present their claims as herein set forth, the survey made by the United States, the offer of said lands for sale as public lands for a long period of time, the reservation and occupancy for light-house and quarrying purposes of portions of said lands, the confirmation by the United States of the claims of other persons to portions of said lands as grants from Spain, the issuance of patents by the United States to the State of Florida, the numerous sales made by the State to these defendants and various other persons, and the occupancy of those claiming title under the United States and from the State of Florida, without protest or objection on the part of complainants or those under whom they claim title, all of which more fully and at length appears from the bill of complaint herein and this answer, the complainants herein are guilty of such laches as to preclude them from the relief sought in and by said bill.

57. These respondents further say that the bill in its averments

85 attacks the title and possession of the United States to the reservation of the United States declared by Executive authority on said island and the public lands thereon not patented, and collaterally attacks the approved surveys made by authority of the United States; that the title set up by the bill is an inchoate title derived from a foreign nation, and no jurisdiction has been confirmed by Congress upon any court to hear or maintain such a title.

58. And these respondents say that anything in said bill material for them to answer and not herein sufficiently answered, confessed, traversed, avoided, or denied is not true to the knowledge of these respondents, all of which things these respondents are ready and willing to prove as this court may direct; and these respondents submit to this honorable court that all and every the matters and things in said complainants' bill mentioned and complained of, are matters which have been fully determined by a coordinate branch of this Government, and with respect to which the complainants are not entitled to any relief from a court of equity, and these defendants pray the same advantage of this defense as if they had presented the same by plea of said complainants' bill.

59. And these defendants further answering, deny complainants are entitled to the relief, or any part thereof, in the said bill of complaint demanded, and pray the same advantage of this answer as if they had

pleaded or demurred to the said bill of complaint, and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

PARROTT & HAMLIN,
Sols. for said D'fts.

(Endorsed:) Answer of St. Johns R'y Co. & Fla. Coast Line Canal & Transportation Co. We consent to the filing of this answer without the signature or corporate seal of defendants. Fleming & Fleming, s'ls. for complainants. Filed Jun. 15th, 1896. E. O. Locke, clerk.

86 Circuit court of the United States, southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHELL ET AL.

Motion having been made that the answer of Henry L. Mitchell and others, sued as the Board of Internal Improvement of the State of Florida, and of Horace S. Cummings, be put in without the signatures of said defendants, and it appearing to the court that there is reason for dispensing with the signatures of defendants to said answer, and the complainants having been served with notice of said motion and having consented that said answer be put in without signature of defendants, it is ordered and decreed that the answer of the said defendants, Henry L. Mitchell and others, sued as the Board of Internal Improvement of the State of Florida, and of Horace S. Cummings, be put in without signatures of the said defendants, on the signatures of their solicitor thereto.

This order is made this 21st day of March, A. D. 1896, as of the 2nd day of March, A. D. 1896, now for them.

Done and ordered this 21st day of March, A. D. 1896.

JAMES W. LOCKE, *Judge.*

(Endorsed:) Furman vs. Mitchell et al. Ordered that signatures to answer be omitted. Filed March 23, '96. N. A. Hreening, deputy clerk.

87 In the circuit court of the United States, southern district of Florida. In equity.

CHAS. M. FURMAN ET AL.
vs.
HENRY L. MITCHELL ET AL.

Exceptions taken by the complainants to the joint and separate answer of Henry L. Mitchell, governor; William D. Bloxham, comptroller; Charles B. Collins, treasurer; William B. Lamar, attorney-general, and L. B. Wombwell, commissioner of agriculture, all of the State of Florida, and Henry S. Cummings, defendants, to the amended bill of complaint of Charles M. Furman and others, complainants, for impertinence.

First. That commencing with the word "and," in the 4th line of the seventeenth paragraph, all the following portion of said paragraph is impertinent.

Second. That all of paragraph nineteen is impertinent.

Third. That commencing with the words "and they," in the 2d line of paragraph twenty-three, all the following portions of said paragraph is impertinent.

Fourth. That commencing with the words "that as against," in the 12th line of paragraph twenty-six, the same and all the following portion of said paragraph is impertinent.

Fifth. That all of paragraph twenty-seven is impertinent.

Sixth. That all of paragraph twenty-nine is impertinent.

Seventh. That all of paragraph thirty is impertinent.

Eighth. That commencing with the words "that the family," in the 4th line of paragraph thirty-one, the same and all the following portion of said paragraph is impertinent.

88 Ninth. That all of paragraph thirty-two is impertinent.

Tenth. That all of paragraph thirty-three is impertinent.

Eleventh. That all of paragraph thirty-four is impertinent.

Twelfth. That all of paragraph thirty-five is impertinent.

Thirteenth. That all of paragraph thirty-seven is impertinent.

Fourteenth. That all of paragraph thirty-eight is impertinent.

Fifteenth. That all of paragraph thirty-nine is impertinent.

Sixteenth. That all of paragraph forty is impertinent.

Seventeenth. That all of paragraph forty-one is impertinent.

Eighteenth. That all of paragraph forty-two is impertinent.

Nineteenth. That all of that portion of paragraph forty-three commencing with the words "and in A. D. 1867" in the 3 & 4" lines of said paragraph and the following portion is impertinent.

Twentieth. That all of paragraph forty-four is impertinent.

Twenty-first. That all of paragraph forty-five is impertinent.

Twenty-second. That all of paragraph forty-six is impertinent.

Twenty-third. That all of paragraph forty-seven is impertinent.

Twenty-fourth. That all of paragraph forty-eight is impertinent.

Twenty-fifth. That all of paragraph forty-nine is impertinent.

Twenty-sixth. That all of paragraph fifty is impertinent.

Twenty-seventh. That all that portion of paragraph forty-one commencing with the words "that a large portion" in the 4th line of said paragraph and the following is impertinent.

Twenty-eighth. That all of paragraph fifty-two is impertinent.

Twenty-ninth. That all of paragraph fifty-three is impertinent.

Thirtieth. That all of paragraph fifty-four is impertinent.

Thirty-first. That all of paragraph fifty-five is impertinent.

Thirty-second. That all of paragraph fifty-six is impertinent.

89 Thirty-third. That all of paragraph fifty-seven is impertinent.

In all of which particulars the complainants except to the said answer of the said defendants as impertinent, and insist that the same ought to be expunged from the said answer.

FLEMING & FLEMING,
BISBEE & RINEHART,
Complainants' Solicitor.

(Endorsed:) Furman *vs.* Mitchell. Complainants' exceptions to joint and separate answer to the defendants to the amended bill of complaint. Filed April 6/96. N. A. Greening, dep. clk.

90 In the United States circuit court, southern district of Florida.
In chancery.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHELL ET AL.

Exceptions taken by the complainants to the joint and separate answer of the St. Johns Railway Company, a corporation organized and incorporated under the laws of the State of Florida, and the Florida Coast Line Canal and Transportation Company, a corporation organized and incorporated under the laws of the State of Florida, defendants, to the amended bill of complaint of Charles M. Furman and others, complainants.

First. That commencing with the words "and they aver" in the 4th and 5th lines of paragraph 17, the same and all the following portions of said paragraph is impertinent.

Second. That all of paragraph 19 is impertinent.

Third. That all of paragraph 23 is impertinent.

Fourth. That commencing with the words "that as against" in the 12th line of paragraph 27, all the following portion of said paragraph is impertinent.

Fifth. That all of paragraph 30 is impertinent.

Sixth. That commencing with the words "that the family of Jose Fish," in the fifth line of paragraph 31, all the following portion of said paragraph is impertinent.

Seventh. That all of paragraph 32 is impertinent.

Eighth. That all of paragraph 33 is impertinent.

Ninth. That all of paragraph 34 is impertinent.

Tenth. That all of paragraph 35 is impertinent.

91 11th. That all of paragraph 37 is impertinent.

12th. That all of paragraph 38 is impertinent.

13th. That all of paragraph 39 is impertinent.

14th. That all of paragraph 40 is impertinent.

15th. That all of paragraph 41 is impertinent.

16th. That all of paragraph 42 is impertinent.

17th. That commencing with the words, "and in A. D. 1867," in the 3rd and 4th lines of paragraph 43, all the following portion of said paragraph is impertinent:

18th. That all of paragraph 44 is impertinent.

19th. That all of paragraph 45 is impertinent.

20th. That all of paragraph 46 is impertinent.

21st. That all of paragraph 47 is impertinent.

21st a. That all of paragraph 48 is impertinent.

21st b. That all of paragraph 49 is impertinent.

22nd. That, commencing with the words, "they are advised," in the 2nd and 3rd lines of paragraph 50, all the following portion of said paragraph is impertinent.

23rd. That all of paragraph 51 is impertinent.

24th. That all of paragraph 52 is impertinent.

25th. That all of paragraph 53 is impertinent.

26th. That all of paragraph 54 is impertinent.
27th. That all of paragraph 55 is impertinent.
28th. That all of paragraph 56 is impertinent.
29th. That all of paragraph 57 is impertinent.
30th. That, commencing with the words, "and these respondents submit," in 5th and 6th lines of paragraph 58, all the following portion of said paragraph is impertinent.

92 In all of which particulars the complainants except to the said answer of the said defendants as impertinent, and insist that the same ought to be expunged from the said answer.

FLEMING & FLEMING,
BISBEE & RINEHART,
Complainants' Solicitor.

(Endorsed:) Furman vs. Mitchell. Exceptions to answer of St. Johns Ry. Co. and Fla. Coast Line C. & T. Co., defendants. Filed June 20th, 1896. E. O. Locke, clerk.

93 In the circuit court of the United States for the southern district of Florida. In equity.

CHAS. M. FURMAN ET AL. }
HENRY L. MITCHELL ET AL. }

This cause coming on to be heard upon the exceptions taken by the complainants to the joint and separate answer of Henry L. Mitchell et al., and having been fully heard and considered, it is hereby ordered that such exceptions be sustained as to the second, third, fourth, twenty-second, thirty-first, thirty-second, and thirty-third articles thereof, and be overruled as to all others.

And said cause coming on further to be heard upon the exceptions taken by the complainants to the answer of the St. Johns Railway Co. and the Florida Coast Line and Transportation Co. and having been fully heard and considered, it is hereby ordered that such exceptions be sustained as to the second, third, fourth, twentieth, twenty-fifth, and twenty-ninth articles thereof, and be overruled as to all others.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., July 22d, 1896.

(Endorsed:) Furman vs. Mitchell. Order on exceptions to answers. Filed July 22d, 1896. E. O. Locke, clerk.

94 In the circuit court of the United States, southern district of Florida. In chancery.

C. M. FURMAN ET AL. }
vs.
H. L. MITCHELL ET AL. }

The replication of Charles M. Furman, in his own right and as administrator de bonis non cum testamento annexo of the estate of C. M. Furman, deceased, Bolivar B. Furman, and A. G. Furman, complainants, to the answer of the St. Johns Railway Company and the Florida Coast Line Canal and Transportation Company, defendants.

These repliants, saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual, in the law to be replied to, confessed and avoided, traversed or denied, is true; all which matters and things there repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said bill they have already prayed.

FLEMING & FLEMING,
BISBEE & RINEHART,
Complainant's Sol's.

(Endorsed:) Furman vs. Mitchell. Replication. Filed July 28th, 1898. E. O. Locke, clerk.

95 In the circuit court of the United Stat's, southern district of Florida. In chancery.

C. M. FURMAN ET AL.
vs.
H. L. MITCHELL ET AL.

The replication of Charles M. Furman, in his own right and as administrator de bonis non cum testamento annexo of the estate of Charles M. Furman, deceased, Bolivar B. Furman, and Alester G. Furman, complainants, to the answer of H. L. Mitchell, governor of Florida; W. D. Bloxham, comptroller; C. B. Collins, treasurer; W. B. Lamar, attorney-general, and L. B. Wombwell, commissioner of agriculture, as the board of trustees of the internal improvement fund of the State of Florida, and of Horace S. Cummings, defendants.

These repliants, saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied to, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said bill they have already prayed.

FLEMING & FLEMING,
BISBEE & RINEHART,
Complainant's Sol's.

(Endorsed:) Furman v. Mitchell. Replication. Filed July 28th, 1896. E. O. Locke, clerk.

96 In the United States circuit court, southern district of Florida.
In chancery.

C. M. FURMAN ET AL.
vs.
H. L. MITCHELL ET AL.

This cause coming on to be heard upon the motion of complainant's counsel for the appointment of a master herein, and it appearing to the court from an examination of the pleadings that the cause is ripe for such appointment:

Now, therefore, upon consideration thereof, it is ordered and decreed that H. H. Buckman, esq., is hereby appointed master of this court for this purpose, and with directions, after due notice to the solicitors of record for all parties, to examine and reduce to writing the testimony of such witnesses as may be produced before him, and to receive such other evidence as may be offered, and to report the same with his findings of law and fact to this court with all convenvient speed.

Done and ordered this twenty-seventh day of July, A. D. 1896.

JAMES. W. LOCKE, *Judge.*

(Endorsed:) Furman vs. Mitchell. Order appointing special master. Filed July 28th, 1896. E. O. Locke, clerk.

97 Circuit court of the United States, southern district of Florida.
In chancery.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHELL ET AL.

This cause coming on to be further heard upon the motion of the defendants, Henry L. Mitchell et al., as trustees, for the appointment of a special examiner at Key West, Florida, to take the testimony of Mary E. English, a witness on behalf of the said defendants, and it having been made to appear that the testimony is material; that good reason exists why said witness can not appear before the special master appointed to take the testimony in said cause, to give her testimony orally, the defendants, with their motion on the 19th day of December, A. D. 1896, having filed herein their proposed interrogatories, it is hereby ordered that a commission issue from the court, directed to Ramon Alvarez, esq., of Key West, Florida, authorizing and directing him to take the testimony of said witness, Mary E. English, upon said interrogatories filed and such cross-interrogatories as the complainants may file; that the said defendants serve a copy of said interrogatories upon the complainants in this cause, or their solicitor, forthwith, if the same has not been done, and that the complainants have ten days in which to file cross-interrogatories before the issuance of said commission.

Done and ordered this 6th day of January, A. D. 1897.

JAMES W. LOCKE, *Judge.*

(Endorsed:) Furman vs. Mitchell. Order appointing Ramon Alvarez to take testimony of witness at Key West, Florida. Filed Jan. 6th, 1897. E. O. Locke, clerk, by Louis Starke, deputy clerk.

98 In the circuit court of the United States, fifth circuit, southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL.
vs.
H. L. MITCHELL, GOVERNOR, ET ALIA.

Report of testimony and findings of master herein.

To the honorable the judges of said court, in chancery sitting:

The undersigned heretofore, on the twenty-seventh (27) day of July, A. D. 1896, by the order and decree in this case of that date, appointing him master to "examine and reduce to writing the testimony of such witnesses as may be produced before him and to receive such other evidence as may be offered, and to report the same, with his findings of the law and facts, to this court," begs respectfully to submit and report the following as his report, as master, of the testimony taken and produced before him, on the part of both the complainant' and defendant', together with his findings of fact and law, as follows:

That, pursuant to the said order and the several orders in said cause made extending the period for taking testimony therein, I commenced the taking of testimony in said cause on November 24th, A. D. 1896, and continued the same from time to time until July 6th, 1897,
99 both inclusive, and said testimony being taken both at the city of Jacksonville and at the city of St. Augustine, in this State, all of which testimony was taken upon due notice, from time to time given by the counsel and solicitors for the complainants and defendants, and at which several hearings there appeared before me F. P. Fleming, esq., of Fleming & Fleming, and C. D. Rinehart, esq., of Bisbee & Rinehart, solicitors representing the complainants, and W. W. Dewhurst, esq., and A. G. Hamlin, esq., of Parrott & Hamlin, solicitors representing defendants.

I further report that the evidence consisted of the testimony of witnesses taken before me upon oral interrogatories; the depositions of witnesses taken upon written interrogatories; extracts from the American State Papers, and maps, plats, and documentary evidence, which are all by me referred to and tabulated as follows:

The testimony taken before me upon oral interrogatories, extracts from the American State Papers, and the record of the proceedings before the master are to be found in the bound record marked Proceedings before the master, embracing papers from one (1) to two hundred and fifty-one (251), inclusive, and are herewith filed as part of this report.

NOTE.—The volumes of the American State Papers of the Duff Green and Gale' & Seaton's editions, were offered in evidence by the complainants and defendants respectively, to show such parts of the said documents as deemed necessary by them, extracts from which are substituted in place of the bound volumes, by the consent of the counsel for complainants and defendants, and such extracts as were offered and introduced in evidence are now typed out and incorporated in and form part of the bound proceedings before the master in their proper place and order above referred to.

100 The deposition of Ann E. Furman, taken on the part of and introduced by the complainants, is filed as complainants' exhibit, marked "B."

The deposition of Venancio Sanchez, taken and introduced on the part of the complainant', is filed as complainants' exhibit, marked "G."

The deposition of Mary E. English, taken and introduced on the part of the defendant, is filed and marked "Defendant's Exhibit # 32."

Tax receipts offered by the complainant' are marked complainants' exhibits from one (1) to fifteen (15), both inclusive.

Copies of other documents offered by the complainants are lettered, respectively, complainants' exhibits C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V.

Documentary evidence introduced by the defendant other than the extract from the American State Papers, and already referred to, are marked exhibits from one (1) to twenty-six (26), inclusive, from thirty (30) to thirty-one (31), both inclusive, and from thirty-three (33) to thirty-seven (37), both inclusive. The missing numbers twenty-seven (27), twenty-eight (28), and twenty-nine (29) were not used by inadvertence, and missing number thirty-two (32) is the deposition of Mary E. English, already referred to, all of which said testimony included in the said record of proceedings and the several respective exhibits are herewith filed as and made a part of this the master's report.

This cause was finally heard and argued before the master on the 9th, 10th, and 11th, and 12th of August, 1897, and on said last day finally submitted for decision, the defendants did not file their full briefs with the master until August 24th, 1897.

The master having carefully investigated and considered the evidence and law of the case, and having now finally arrived at his findings
101 and judgment herein, doth find as matters of law and fact as follows:

The master finds as matter of fact:

That Jesse or Jose Fish, the son of the parent of the same name, died about the year 1815 or 1816, on Anastacia Island, leaving him surviving his mother, Sarah Fish.

That he was the only son of Jose Fish, sr., and Sarah Fish.

That Sarah Fish had one daughter, Phoebe, who married Wm. Gabriel Perpall and died prior to her mother, Sarah Fish, and brother, Jessie Fish.

That Phoebe had two children by her marriage with Perpall, daughters, Jessie Rosalie and Susana. Susana died about the year 1820 or 1821, prior to her grandmother, Sarah Fish, unmarried and without issue.

That Sarah Fish died in 1824, on the island of Anastacia or at St. Augustine, leaving her surviving her granddaughter, the said Jessie Rosalie Perpall.

That said Rosalie intermarried with one Charles M. Furman in 1826 and died in 1827, leaving one child, a son, W. G. Furman, who died in the year 1836.

That Charles M. Furman, her husband, died in 1872.

That as early as March 22nd, 1792, Jesse Fish, jr., presented his petition to the gove'nor of East Florida, praying that he be placed in the possession of the island of the Orange Grove, claiming that said

island was abandoned and was the property of his deceased father, which no one would bid upon at the auction sale of his father's estate, ordered by the gove'nor of the Spanish province of East Florida, and for which he now offers to pay the sum of $1,605.00.

That he paid the money to the officers of the Spanish Government in Florida, and thereafter presented two additional petitions, praying that the said island be granted to him, and that he be put in possession of the same, either by virtue of his father's title and possession, which he claimed in the old Spanish times, before the English occupation
102 in Florida; of his own purchase, or by virtue of his own claim as a new settler in the province.

That various proceedings were had upon the petitions, during which Gove'nor Quesada became ill, and the several duties and functions devolving upon his official position were discharged by various officials, who acted in these respective capacities pro tem.

That from and including the 16th day of May, 1792, to and including the 17th day of June, 1795, Batolome Morales, who is styled Colonel of Infantry of the Royal Armies, commandant of the Third Bat'al/ion of Cuba, garrisoning the city of St. Augustine, Florida, was acting as the political and military gove'nor of the province of East Florida pro tem., owing to the illness of the regular incumbent.

That the words bergel, or vergel, or burgel, mean beautiful grove or orchard.

That on the lands petitioned for by Fish, and which he claimed his father had owned and possessed, there was an orange grove or orchard.

That this plantation, called the bergal or orange grove, was situated upon the island called St. Anastacia, which island is situated opposite the city of St. Augustine, in the State of Florida, and contains at this day 6,690.50 acres of high land and 1,351.00 acres of marsh land, making an aggregate of about 8,041.58 acres of land.

That the plantation of the beautiful or orange grove, with the lands annexed to it on the island of St. Anastacia, and which was claimed by Fish as the property of his father, and which he solicited to purchase or have granted to him in 1792 by the Spanish Government, contained in area at that time the amount of about ten thousand acres of land.
103 That this composed, virtually, the whole of the island of St. Anastacia, with the exception of a small strip bordering the Atlantic Ocean, known as the King's Quarries, which included the reservation of the lookout.

That since 1792 a large part of said island has been washed away by the encroachments of the Atlantic Ocean.

That it was this island of St. Anastacia on which was situated the plantation called the Orange Grove, and which Fish, jr., petitioned the Spanish Government to grant to and put him in possession of.

That, from July 10th, 1795, until his death in the year 1815 or 16, the said Jesse or Jose Fish claimed and possessed the whole of said island, with the exception of the lands so marked off and reserved, and resided thereon, at the plantation called the Orange Grove, where, on said last-named date, he died and was buried.

That, after his death, his mother, Sarah Fish, continued to reside on and possess said land, claiming the same absolute property, until the year 1824, when she died.

That, after her death, the slaves and servants of the Fish estate still continued to reside upon the said island, and inhabit it at the place called the Orange Grove, under the charge and supervision of one Perpall and one Sanchez, and this as agents for the said estate of Fish and Charles M. Furman, until just prior to the breaking out of the civil war, about the year 1856 or 60, when the said slaves were removed to Charleston by Charles M. Furman, who was the husband of the deceased Perpall, and that the said property was then placed in the hands of Venancio Sanchez, as agent of the said Charles M. Furman, who resided there himself for a short period of time, and, as such agent, has been in actual possession by himself, his servants, and employees of all that portion of the said island comprising the plantation of the Orange Grove since
104 then and up to the present time, and still so remains, claiming title to the whole island, except the reservation, as the property of the Fish or Furman heirs.

That, from 1824 to the present time, the heirs of said Fish, through their agents, employees, servants, and tenants, have possessed and actually occupied the plantation of the Orange Grove on the said island, in actual area a little less than one hundred acres, and claimed possession of and title to the whole of the said island, with the exception of the lands so reserved.

That such possession and acts and claims of ownership, with the exception of the lands reserved, since 1824 have consisted in the actual occupation of the plantation of the Orange Grove on said island; in the maintaining and keeping in repair of the buildings, fences, and dams on and about the said plantation; in cultivating the lands; in paying the taxes on the whole island of ten thousand acres up to the year 1856, as long as taxes would be received; in paying the taxes on the island for the year 1889, assessed as "Unknown," and aggregating in that year, according to the assessment, about six thousand acres.

That the taxes for the year 1848 to 1856, inclusive, were paid in the name of Charles M. Furman, through his said agents.

In building new buildings, in place of those destroyed during the war, and in maintaining same, and in defending suits against a portion of the lands constituting a part of the place called the Orange Grove and adjacent lands on the said island; in entering into an agreement with the engineer of the United States as to the quarrying of stone on the said island, for the purposes of the United States Government; in protesting against the action of the United States in allowing homestead entries to be made on certain parts of the said island other than the plantation of the Orange Grove.

In protesting against the claim of the United States as to part of the said island (except the reservation aforesaid) as being public lands; in cutting and getting wood and posts for fencing from the wood lands on the island and adjacent to the Orange Grove, and in obtaining wood from the beaches of said island.

105 That Fish and his heirs and those claiming under him have continuously since 1795 claimed to own and possess the whole of the said island of St. Anastacia, with the exception of the said reservation, notoriously and openly.

That what is called "Fish" Island at the present time, and is embraced in lots two, three, and 6 of section 29, Tp. 7 S., R. 30 E., is

the place of the Orange Grove, but is not an island in itself, but is part and parcel of Anastacia Island proper, and is the only part of said island fit for cultivation, with the exception of isolated spots of small area, the balance of said island being wild land and generally unfit for cultivation, and producing no timber growth fit for other purposes than wood or fencing posts.

That there existed on the said island, on the east side near the sea, an old stone tower, known as the Spanish light or lookout house, now all washed away by the encroachment of the sea, except its foundation and site.

That there existed a small fortification at a place called Matanzas, which latter, on the cession of the provence to the United States, was turned over to the United States by Spain as a military post; but the exact location of this post is not disclosed by the evidence, or as to whether it was on said island or the mainland.

If on the island, it is not embraced within the land in controversy, as Matanzas bar is at the lower or south end of the island.

That there exists on the island of St. Anastacia, and which have existed there longer than the memory of any man may run to the contrary, two roads. One is located on the east side of the island and runs north and south, and was and is known as the King's Road. The other runs east and west across the island, from the plantation of the
106 Orange Grove, or what is called the Fish Homestead, until it intersects the King's Road, running north and south, at a point about one and one-half a mile SE. of what was known as the old Spanish light or lookout house.

That the site of said Spanish lookout or light-house is now upon or very near the beach and about a quarter of a mile distant in a northwesterly direction from the present light-house.

That this old Spanish light or lookout house was erected in the time of the Spanish dominion; was constructed with a wall with loopholes below, at which a garrison was kept, and was used in addition to signal ships.

That this structure was situated on a royal reservation, having about twenty acres, and that this reservation was all within the lands reserved by the King from the grant to Fish, and is included in the reservation designated immediately hereafter.

That about forty feet east of the intersection of the roads from the Fish homestead and the King's road was, until lately, a pile of stones about six feet square, and about twelve feet north of this was another pile, which piles of stone marked the southwest corner of the King's Quarries and the reservation reserved in the grant to Fish, and that a line drawn from these piles of stone northwesterly to the site of the old Spanish light or lookout house would form the western boundary of what was known as the King's Quarries and the reservation of the lands excepted from the Fish grant.

107 The lands embraced within (east of this line) and between the old Spanish light or lookout house and the piles of stone, and a line projected eastwardly from the piles of stone to the seabeach, are the lands known as the King's Quarries, and the lands that were marked off and reserved from the grant to Fish, and included within their boundaries the lands of the Spanish reservation of the lookout house.

That this reservation and quarry so embraced within these boundaries is the only portion of the royal domain on Anastacia Island (unless the post called Matanzas was located on the island) which existed at the time of the cession of Florida by Spain to the United States, and which could lawfully have been delivered as property of the Spanish Government by it to the United States, and that this was what was delivered to Col. Butler upon the delivery of the province.

That in the old Spanish times and at the time of the reservation this reservation was much larger, extending further eastward, but that the same has washed away from encroachments of the sea for at least a half a mile since then.

That in 1833 the United States extended the public surveys over the said island.

That in 1833 Lieut. Tuttle, of the United States Engineers, in order to obtain stone for the repairs of the sea wall and Ft. San Marco at St.
108 Augustine, on behalf of the United States, entered into a memorandum agreement with one Perpall, representing the heirs of Jesse Fish, by which a permit was granted to the United States by Perpall, as agent of the heirs of Fish to quarry stone for the purposes wanted upon the island within certain limits, the object of such agreement being because the United States officers and heirs of Fish could not agree readily at that time as to what portion of the quarries belonged to the United States and what portion belonged to the heirs of Fish.

That from time to time stone has been quarried on the said island by persons indiscriminan*t*'ly, both in what is known as the King's Quarries and elsewhere, but whether by permit or otherwise does not appear.

The stone was quarried on the island for the building of the convent and the Ponce De Leon Hotel at St. Augustine, but whether by permit or otherwise does not appear.

That the quarries, as they exist to-day on the island, commence at the site of the old Spanish light and extend over a mile or more south of the crossroads, or south of what is known as the King's Quarries.

That the quarries south of what was known as the King's Quarries had the reputation as being known as the People's Quarries, from which the people could quarry.

109 That in 1868–9, and in some few instances since that date, the United States has permitted divers persons, some forty or more, to make homestead entries upon the lands of Anastacia Is*na*d other than the lands comprising the immediate place of the orange grove, but in all such instances the entries have been either cancelled or abandoned, and no person making the entry was in the actual possession or occupation of any of the said lands so entered upon at the date of the filing of this bill, except as noted hereafter.

That homestead entries were made by the following persons, who were in the actual possession of the property entered at the date of the filing of the bill in this cause, and still remain in possession and have been for over seven years, tho' no testimony shows any patent has been issued to them for the same, to wit: Michael Harrington, of SW. ¼ of the NE. ¼ of section 28; Wells R. Stokley, of all lot 4 in section 21, and his son, Henry M. Stokley; of lot 7 in section 21; all in Tp. 7 S., R. 30 E.

That the St. Augustine South Beach Ry. Co. has, and had, at and before the filing of the bill in this cause, and continues to possess, and

is in the actual occupation of, a roadbed, and claims to be in possession of a right of way running between lots two and three, one and four, seven and nine, of section 17, through the NE. ¼ of section 28, through lots two, three, four, and five of section 27, Tp. 7 S., R. 30 E, tho' the exact location of the line and roadbed of the said R'y. Co. can
110 not be ascertained from the testimony, nor the extent of the right of way of which they claim to be in possession.

That the President of the United States issued a proclamation, dated March 8th, 1839, purporting to throw lands in Tps. 10, 11, 12, 13, 14, 15, 16, and 17, Range 30 S. and east, open to sale.

That the President of the United States, by his order dated Feb'y 1st, 1883, purported to reserve for light-house purposes lot two (2) of section twenty-one (21), and by similar order, dated June 22nd, 1869, lot one (1) of sec. 21, all in Tp. 7 S., R. 30 E.

That by similar order, dated May 4th, 1893, there was purported to be reserved for military purposes—

the SE. ¼	section	21
all of frac. sec.	"	22
the NE. ¼ of the NE. ¼ of	"	28
all of	"	27

Also all of the lands formed by the sea since the survey of 1855, lying east of said lands and between the north boundary line prolonged of said southeast quarter of sec. 21 and the south boundary line prolonged of section 27, all in Tp. 7 S., R. 30 E., none of which, except lot two (2) of section 21, are part of the lands claimed in the bill and as to which relief is sought.

That what purported to be an extract from the minutes of the
111 county court of St. Johns County, State of Florida, under date of July 31st, 1841, is an entry under the head of estate of Sarah Fish, certain persons named as executors of her estate required to file their accounts.

That from a translation of a Spanish document purporting to be a report or memorial of Governor Cespedes, of the province of East Florida, to the Spanish Government, under date of the year 1787, speaking of the island called St. Anastasia and the waters and harbor near St. Augustine, he makes mention therein as follows: Upon the island there is a tower, built of stone, which serves as a lookout house; near by a powder house, guarded by detachment of soldiers; also on the island are quarries sufficient for all public and private works. On the inside of the bar at Matanzas there is a round tower, guarded by a detachment of soldiers; that the post at Matansas and at the lookout were turned over by the Spanish authorities to the United States on the cession.

That on August 31st, 1823, Sarah Fish presented her memorial to the board of commissioners appointed by Congress to investigate as to land claims in East Florida, claiming title to the island of St. Anastacia under the grant to Jessie Fish in 1795, aggregating ten thousand acres of land.

That on December 16th, 1825, the board of commissioners for East Florida reported to Congress the claim of Sarah Fish, heirs to Anastasia Island, for ten thousand acres, as a valid claim for confirmation, and that said claim was reported to Congress by the Secretary of the
112 Tre'sury of the United States for confirmation, with his report under date of February 23rd, 1826.

That neither the Board of Trustees of the Internal Improvement Fund of the State of Florida, the Florida East Coast Line Canal and Transportation Company, the St. Johns Ry. Co., John A. Henderson, Horace S. Cummings, or any or either of them by themselves, their agents, tenants, servants, or any other person or persons have been or were at the date of the filing of the said bill in this cause, in the actual occupation or possession of the said lands claimed by them or purported to be conveyed to them as above set forth, or of any part or portion of them.

That all of the said several parcels of land described in the said patents and selections to and by the State of Florida, and to the defendants, The Fla. East Coast Line Canal and Transportation Company, the St. Johns Ry. Co., John A. Henderson, and Horace S. Cummings, are wild and uncultivated lands, and at the date of the filing of the bill in this cause, vacant, open, and unoccupied by any person or persons.

That the Florida East Coast Line, Canal and Transportation Company and the St. Johns Ry. Co., since the date of their respective deeds from the Board of Trustees of the Internal Improvement Fund of the State of Florida have returned the said lands described in their said deeds respectively, for taxes for State and county purposes, and have regularly paid the taxes assessed thereon.

113 That commencing with the year 1796 and ending with the year 1812, there were baptised in the Roman Catholic Church and faith, at St. Augustine, Florida, six children of dark color, slaves, natural children of Don Jessie Fish and Clarissa Sanders, a negress, described as a slave until the year 1808, of Don Juan Sanders and others, after that as a free woman.

That Jessie or José Fish was a white man.

That the complainants in their own right have brought suits in ejectment in the State court of St. Johns County against some six persons, who claim to be in possession of certain lands, parts of the said island, but that the lands sued for in the said suits are not part of the property in the bill described, as to which complainants pray any relief except as to lot seven in section 21, sought to be recovered in the suit against Henry M. Stockley and the SE. ¼ of the NE. ¼ of section 28, all in Tp. 7 S., R. 30 E., in the suit against Michael F. Harrington.

The master finds as matter of mixed law and fact:

That Jessie Fish, who died in the year 1815 or '16 on Anastasia Island, died intestate, without lawful issue, and that Sarah Fish, his mother, was his sole heir.

That his issue by Clara or Clarissa Fish were bastards.

114 That Sarah Fish, who died in the year 1824, died intestate as to all that real estate known as Anastasia Island.

That Rosalie Perpall Furman was her sole heir at law and died intestate.

That William G. Furman, son of the said Rosalie, died a minor unmarried without issue and intestate.

That Charles M. Furman was the husband of the said Rosalie, was her heir at law, and sole heir at law of her son, William G. Furman.

That Charles M. Furman died testate in the year 1872, and by his last will and testament devised, after certain specified legacies to be paid

to his sisters and others, out of his estate, all the balance of his property as follows:

One-half to Charles M. Furman,
One-quarter to Richard K. Furman, and
One-quarter to Bolivar and Irwin Furman.

That letters cum testamento annex de bonis non were duly issued by the probate court of Charleston County, in the State of South Carolina, to Charles M. Furman, upon the property and estate of Charles M. Furman, deceased, in which said court said will was duly admitted to probate on the 2nd day of July, A. D. 1872, no executor having been named under the will of the said Charles M. Furman.

That the several legacies named and bequeathed in and by said will of Charles M. Furman, deceased, have been paid and discharged previous to the filing of this bill.

115 That Richard K. Furman died intestate, leaving his widow, Julia K. Furman, as his sole heir.

That Julia K. Furman, sole heir of Richard K. Furman, conveyed all her right, title, and interest in Anastacia Island by her duly executed deed of quitclaim, dated September 19, 1889, to Alester G. Furman.

That Irwin K. Furman, one of the devisees in said will of Charles M. Furman, mentioned, conveyed to Alester G. Furman, by deed duly executed August 5th, 1885, the same being a deed of warranty, all right, title, and interest in and to Anastasia Island.

That by devise, descent, and the conveyances above referred to, Charles M. Furman, Bolivar Furman, and Alester G. Furman, the complainants named in the bill of complaint in this case, acquired all right, title, and interest and estate of Jesse or José Fish, son of Jesse or José Fish, of the same name, which the said Jesse or José, jr., had or was entitled to in and to the lands and estate called Anastasia Island, in the State of Florida.

That Charles M. Furman, as administrator de bonis non cum testamento annexo of the estate of Charles M. Furman, deceased, not being shown as such to have any interest in said lands, is not a necessary or proper party to the bill of complaint in this cause.

That Don Juan Nepomaseno de Quesada was the Spanish governor of East Florida from the year 1792 to 1795.

That from the 16th day of May, 1795, up to and including the 17th day of June, 1795, Bartolome Morales was the political and military governor of the provence of East Florida pro tem., then under the dominion of Spain, invested with full power as such to discharge and exercise all the duties and powers of said office, and so held and recognized by all the officials of the provence.

116 That during the whole period from 1792 to 1795, both inclusive, that Joseph fe Ortega was the assessor-general and licentiate Gonzallo Zamaranzo collector of the royal treasury, and Jose de Zubezaratta the official notary of the Spanish Government in said provence.

That on the 19th day of June, A. D. 1795, Batolome Morales, political and military governor of the province of East Florida, then under the dominion of Spain, granted to Jesse, José, or Joseph Fish, by his decree and grant of that date, in due form and absolute property, the whole of the island called and known as St. Anastasia, with the exception of what was known as the King's quarries, and also that which was

not granted to the father of said Fish and was reserved by the King, and by the said order and decree directed that Fish be placed in absolute possession of the whole of said island, with the exception aforesaid, by the officials in said decree designated.

That this decree and grant constituted an absolute grant of the said island, except the reservations aforesaid, to the said Fish in fee and without condition, except the payment of the cost of marking off the boundaries of the portion excepted, if it should become necessary to do so.

That on July 10th, 1795, in conformity with said grant and decree, Manuel Solano, the appraiser; Don Jose Lorene, chief master of the royal works, and Don Arribas, officer of the royal comptroller's office, in company with the said Fish, proceeded to the said island of St. Anastasia, and then and there marked off the lands reserved to the King by setting up four stakes, and then and there said officials delivered possession of the whole of the balance of the said island in accordance with said decree and grant to the said Fish, and placed him in the possession thereof.

117 That said possession was delivered to and taken by said Fish, peaceably and quietly and without contradiction.

That the said persons delivering possession to the said Fish were the persons named in and designated by said grant and decree.

That the payment of costs designated by said decree for marking off the boundaries of the lands reserved were a condition subsequent, and while there is no proof before the master as to whether or not any costs were taxed or paid, the master finds that the said grant was valid and complete, and that the failure to pay the same, if they were taxed, would in no wise invalidate it.

That previous to this decree and grant of 1795 the said lands had been laid off and segregated to the father of the said Fish, the exception of the King's quarries and reservation having at that time been previously separated and their boundary defined from the balance of the said island.

That said lands granted to Jesse Fish in 1795, being an island well known and designated by name and entirely surrounded by water, was completely and sufficiently segregated from the royal domain under the decree of 1795, by the act of the officials deputed to give possession by the re-marking of the boundaries of the lands reserved by the officials designated in said decree, and the placing of Fish in the possession of the lands granted to him.

That the said grant and the segregation of the said lands from the royal domain, by the marking off of the reservation and the placing of Fish in possession of the balance of the said island under the grant, con-

constituted a complete and perfect title to the said lands, to wit,

118 to the whole of the island of St. Anastasia, with the exception of the lands so marked off by the officials as reserved to said Fish.

That Jesse, José, or Joseph Fish is the same person to whom these lands are granted.

That from the date of said grant and delivery of possession in the year 1795 Jessie Fish was the sole owner in fee by lawful title and possessed the whole of said island of Anastasia, with the exception aforesaid, claiming the same in absolute property until the day of his death, in 1815 or '16.

That the State of Florida made selections of and that there has been patented to it by the United States, in the year 1856, under the swamp

act of 1850, the following lands, which are part of said island according to the United States survey:

Lots one, two, three, and four, section 17; lots one and two of section 20; lots three and eight in sec. 21; the NW. ¼ and east ½ of SW. ¼ of sec. 28; lots one, two, three, and six of section 29; the W. ½ of the NE. ¼ and NE. ¼ of SE. ¼, section 33; all in Tp. 7 S., R. 30 E., and containing 1,465.15 acres.

That in 1895 the United States issued its patent to the State of Florida for the following-described additional lands, under act of Congress April 9th, 1880, under selections made by the State of what is known as Palatka scrip, which lands are part of said island:

The NW. ¼ of SE. ¼, the S. ½ of the SE. ¼, the W. ½ of the SW. ¼, the NW. ¼ of the NE. ¼, the SW. ¼ of the NE. ¼, the SE. ¼ of the NE. ¼, of section 28, and lots three, four, seven, and eight, section 34; all in Tp. 7 S., R. 30 east, containing 513.30 acres.

119 That under the said laws the State of Florida has further selected—and such selection has been allowed and approved by the Land Office of the United States—the following additional lands, which are part of the said island, and said lands and selections are now reserved for patenting by the United States to the State of Florida: Lots two, four, and seven of section 21; lots one and four, section 32; lots two, five, and six, section 34; all in Tp. 7 S., R. 30 east, containing 367.32 acres.

That the board of trustees of the Internal Improvement Fund of the State of Florida, under date of May , 1885, executed their deed to the Florida East Coast Line Canal and Transportation Company, defendant, embracing the following lands, which are part of the said island by the United States survey: Lots one and two, section 20; the NW. ¼ and the E. ½ of the SW. ¼ of section 28; lot five of section 32; all in Tp. 7 S., R. 30 east, containing 537.47 acres.

That the board of trustees of the Internal Improvement Fund of the State of Florida, under date of September 21st, 1886, executed their deed to the St. Johns Ry. Co., defendant, embracing the following lands, which are part of the island by the United States survey: Lots three and eight in section 21; lot one, section 29; the W. ½ of the NE. ¼ and NE. ¼ of the SE. ¼ of section 33; all in Tp. 7 S., R. 30 east, containing 328.10 acres.

That the board of trustees of the Internal Improvement Fund of the State of Florida, under date of July 30th, 1892, executed their deed to John A. Henderson, embracing the following-described lands, which are part of the island by the United States survey: Lots one, two, three, and four of section 17, Tp. 7 S., R. 30 east, containing 286.28 acres.

120 That the Florida East Coast Line Canal and Transportation Company, under date of June 22nd, 1886, executed its deed to Horace S. Cummings, defendant, embracing the following lands, which are part of the island of Anastasia by the United States survey, to wit: East ½ of the SW. ¼ and the east ½ of the NW. ¼ of section 28, Tp. 7 S., R. 30 east, containing 160.00 acres.

That the deeds from the board of trustees of the Internal Improvement Fund of the State of Florida to the defendants, the Florida East Coast Line Canal and Transportation Company and the St. Johns Ry.

Co., purporting to convey the lands therein described, are in due form and properly executed.

That on September 25th, 1867, the board of trustees of the Internal Improvement Fund of the State of Florida conveyed to Albert D. Rogero lots two and three of section 29, Tp. S., R. 30 east, containing 141.28 acres.

That June 24th, 1867, the same grantor conveyed to Charles F. Hopkins and Albert D. Rogero lot six of section 29, Tp. 7 S., R. 30 east, containing 73 acres.

That October 23rd, 1867, Albert D. Rogero and Charles F. Hopkins conveyed to Alex McGruder and E. Logan by quitclaim deed lot three, section 29, Tp. 7 S., R. 30 east.

That Hopkins and Rogero, on October 23rd, 1867, by quitclaim deed of that date, conveyed to Logan and Magruder lot six, section 29, Tp. 7 S., R. 30 E.

That the State of Florida, through the clerk of the Ct. Ct. of St. Johns County, executed its deed to W. J. Sanchez, Jany. 20th, 1875, for lots three and six, section 29, Tp. 7 S., R. 30 east, and 3, 32, 7 S., R. 30 east, upon tax-sale proceedings.

121 That lots two, three, and six, section 29, Tp. 7 S., R. 30 east, comprise or embrace what is called Fish Island.

That none of these lands embrace lands of which complainants claim relief.

That a concession was made by the Spanish Governor Quesada, under date of February 16th, 1793, to one Lorenzo Rodriguez, to locate on three hundred acres at a place on the island of Anastasia called "the northern part of the creek of the 'Escort' upon his petition to locate at that place to employ his slaves." This permit granted without prejudice to others.

That a concession was made under date of the year 1802 by Governor White to one F. X. Sanchez to locate some slaves under certain conditions and build wooden huts near the "Lookout House," on Anastasia Island, petitioner praying for twenty acres in that locality. The permit, being granted, conditioned, among other things, that he should not locate within one hundred and fifty yards of the "Lookout House," and this without prejudice to third persons.

That neither the said permits nor locations constituted a complete grant in absolute property, and nothing but an inchoate right, subject to the rights of third persons.

That the lands in neither of the permits or concessions, as now defined by the United States surveys of said island, are comprehended within the lands as to which complainants by their bill here seek relief.

That the reservation from the grant to Fish of the King's quarries and the lands not granted to his father, but which were reserved to the King within and east of the line as located from the piles of stone to the site of the old Spanish light or lookout house embraces, at this day, according to the United States surveys:

122 Nearly all of lot one (1), nearly all of lot four (4), the east portion of lot six (6), the east portion of lot nine (9), all of lot five (5), all of lot ten (10), in section twenty-one; all of lots one, two, three, four, and five (1, 2, 3, 4, 5), the northern portion of lots six,

ven, and eight (6, 7, 8) of section 27; the N. portion of the SE. ¼, the E. ¼ of the NE. ¼, the east fractional part of the NW. ¼ of the NE. ¼, arly all of the SE. ¼ of the NE. ¼ of section 28, all being in Tp. 7 , R. 30 east.

That lot four of section 21, the east fractional part of NW. ¼ of NE. nearly all of the SE. ¼ of the NE. ¼ sect. 28, which are embraced thin the reservation, are part of the lands described in the bill of mplaint and as to which complainants ask relief.

That, being unable to designate from the testimony with certainty actly how much of the NW. ¼ of the NE. ¼ and the SE. ¼ of the E. ¼ of sec. 28 is included in the reservation and what is not—that how much is east and how much is west of the line from the piles of ne to the site of the old Spanish light-house—and the master having means of definitely ascertaining the same, except by taking the further stimony of a surveyor, finds and excludes from the lands claimed by mplainants, and as to which they pray relief, the said lands, to wit, lot four (4), section twenty-one (21), the NW. ¼ of the NE. ¼, the 3 SE. ¼ of the NE. ¼ of sec. 28, all in Tp. 7 S., R. 30 east.

The master finds a matter of law as follows:

That, by virtue of the act of Florida of 1855, commonly known as the ternal-improvement act, all the estate, title, and interest had or held by e United States and purported to be granted to the State of Florida the patents under the acts of Congress of 1850, known as the swamp t and the indemnity act, vested in the board of trustees of the internal- provement fund of the State of Florida, defendants.

That, by virtue of the said acts of Congress and the said act of Florida, the equitable estate, right, and title had or held by the United States cause vested in said board of trustee' of the internal-improvement fund the State of Florida, defendants, by virtue of the selections made by e State and approved by the Land Department as to the lands in the ll described thereunder.

That the grant of Fish, being a valid and complete title, properly segated from the public domain prior to January 24th, 1818, stood ratid and confirmed both by the King of Spain and the United States by rtue of the 8th article of the treaty of cession.

That this grant, having been passed upon by the commissioners of st Florida under the acts of Congress and reported by them to Conss for approval as a valid grant in 1826, was further confirmed as to validity by the United States by the act of Congress of May 23rd, 29.

That the limitation in the 12th section of the act of 1828 and the acts pplimental thereto and amendatory thereof, enacted by Congress in gard to private land claims in Florida, did not apply to complete valid grants of land properly segregated from the royal domain 4 and in possession by the grantees prior to Jan. 24th, 1818, and therefore did and do not apply to the grant to Fish so as to bar present action.

The action of the land department of the United States and the decin of the Secretary of the Interior was and is not res adjudicata as to rights of the complainants in this case, and that this court is not bound the decision of the honorable the Secretary of the Interior of the

United States, but has full power to pass upon all questions involved and decide the same as tho' such decision had not been made.

In conclusion, the master finds:

That the complainants are vested with the valid, legal, and equitable title to the lands in controversy, and were and are seized and possessed of the same, or such portions thereof as are involved in this suit, with such seizen and possession as is sufficient under the law to maintain their bill and have the relief prayed.

Second. That the acts of Congress of 1828 and the acts amendatory and supplimental thereto did and do not operate to bar complaintants of this action.

Third. That the United States had and acquired no right or title to these lands in controversy, and consequently conveyed and could convey none to the State of Florida or its board of trustees of the internal improvement fund.

Fourth. That neither the State of Florida nor its board of trustees on the internal improvement fund acquired any right, title, or estate, either legal or equitable, in the lands embraced in the patents from the
125 United States or its selection under the act of 1880 and the approval thereof by the land department of the United States, by virtue of such patents and selections, and therefore had nothing to convey.

Fifth. That neither the defendant John A. Henderson, the Florida East Coast Line Canal and Transportation Company, or the St. Johns Ry. Co. acquired any right, title, estate, or interest, either legal or equitable, by virtue of the deeds of the board of trustees of the internal improvement fund of the State of Florida to said defendants, respectively, in and to the lands in said deeds described, or any part thereof.

Sixth. That the defendant Horace S. Cummings acquired no right, title, estate, or interest, either legal or equitable, by virtue of the deed of the Florida East Coast Line Canal and Transportation Company to him, as to the lands in said deeds described, or any part thereof.

Seventh. That complainants are entitled to the relief prayed in the said bill and to have removed, as a cloud upon their title, the claims of title and estate made by the defendants, the board of trustees of the internal improvement fund of the State of Florida, by virtue of the approved selections under the act of Congress of 1880, to the following-described lands:

Lots two and seven of section 21; lots one and four of section 32; lots two, five, and six of section 34, in Tp. 7 S., R. 30 E., and have removed and declared void as clouds upon their title the patents issued by the United States to the State of Florida, the deeds issued by the board of trustees of the internal improvement fund of the State of Florida
126 to the Florida East Coast Line Canal and Transportation Company, the St. Johns Ry. Co., John A. Henderson, and the deed of the Florida East Coast Line Canal and Transportation Company to Horace S. Cummings, embracing the following-described lands:

Lots one, two, three, and four, section 17; lots one and two, section 20; lots three and eight, section 21; the NW. $\frac{1}{4}$ and E. $\frac{1}{2}$ of the SW. $\frac{1}{4}$, section 28; lots one, two, and three, section 29; the W. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$, section 33; NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$, W. $\frac{1}{2}$ of SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, section 28; lots three, four, seven, and eight, section 34; lot five, section 32.

And to such other and further relief and decree herein as this honorable court shall deem meet.

All of which the master respectfully reports and submits to the court is his action herein.

September 21st, A. D. 1897.

H. H. BUCKMAN, *Master.*

127 *Master's bill of costs and charges.*

1,005 fols. testimony, &c., findings, index, report, &c. (a) per fol	$251.25
Stenographer's costs	87.50
Filing 69 exhibits (a) $0.10	6.90
7 sittings, taking of testimony (a) $5.00 per day	35.00
4 " to hear " "	20.00
4 " " " "	20.00
Cash expenses master three trips to St. Augustine to take testimony; 2 days' cash expenses stenographer	16.50
Compensation of master in investigating briefs, testimony, and making up his findings as to law and fact, occupying a period of field works	300.00
Total	737.15

Respectfully submitted.

H. H. BUCHMAN, *Master.*

(Endorsed:) Report and findings of master. Filed this 24th day of Sept'r, 1897. E. O. Locke, clerk, by Louis Starke, deputy clerk.

128 In the circuit court of the United States, southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHELL, GOVE'NOR, et alia.
} Bill to remove cloud on title, &c.

By the master.

Complainants pray the declaring void and removal as cloud on their title of certain patents from the United States to the State of Florida, certain approved selections by the State under the act of 1880, certain deeds by the board of trustees of the internal improvement fund of the State of Florida, defendants, to the defendants John A. Henderson, the Fla. East Coast Line Canal and Transportation Company, and the St. Johns Ry. Co., and deeds of the Florida East Coast Line Canal and Transportation Company to the defendant Horace S. Cummongs, purporting to convey to the State of Florida by the United States, & through its board of trustees to the defendants herein certain lands on the island of St. Anastasia, in St. Johns County, Fla., to which complainants claim title, claiming to be seized and possessed of the same by virtue of a Spanish grant in absolute property made prior to January 24th, 1818.

Demurrer to bill having been overruled and answers filed, and after exceptions passed on, replication filed to answers, the case was referred to the master to take testimony and report the same with his findings of law and fact.

129 The master has found that the complainants are entitled to the relief prayed, and submits this opinion with his findings and report.

There are three important and principal questions among the many involved and submitted to the master to pass upon.

1st. Was the grant under which the complainants claim title a perfect, complete, and valid grant in absolute property?

2nd. Did the acts of Congress for the adjudication of private land claims in Florida apply to such grants and the limitation prescribed in said acts, and principally the acts of 1828, providing for the presentation of claims to the courts of the United States for adjudication, and providing further that any claim not so presented should be barred, both at law and in equity, apply to the present claim so as to preclude complainants from maintaining this suit?

3rd. Was the action of the Land Department of the United States and the decision of the Secretary of the Interior against the validity of the grant and declaring the said lands public lands res adjudicata and binding as to be the law of the case, so as to preclude an investigation and decision by a court of equity, irrespective of such action?

Complainants offered the American State Papers and a certified copy of the proceedings in grant from the surveyor-general's office of Florida, with translations, as evidence of the grant. (See pp. Record 23–64 & Ex. "U," "V.")

It was contended by the defendants that the American State Papers were not evidence, but the master thought them evidence under the decisions of the supreme courts of Florida and of the United States Doe ex dem. McGuider—Roe, 13 Fla., 611; Watkins, lessees Hofman, 16 Pet. U. S., 25.

130 As to the copies from the surveyor-general's office, it was objected that such copies and the originals on file in the surveyor-general's office showed that they were mutilated, the half sheets being torn or cut off in many places, and that some of the papers bore subsequent to the date of the decree of grant. Testimony by the defendants was also introduced as tending to show the customs and regulations of Spain in regard to the form in which the orders were made on such proceedings, and that the watermarks in the original papers were not all alike; but the testimony of the defendants failed at best, in the opinion of the master, to cast more than a suspicion of immaterial irregularities, and fell far short of overcoming the presumption of validity and genuineness that attaches to such documents produced from the public archives of the country, properly verified by the keeper thereof, and the authentic compilation of the same in the American State Papers, published under the sanction and by authority of this Government.

It is the rule that the burden of proof lies on the attacking party, and such proof must be sufficient to overcome the prima facie presumption arising from the face of the proceedings themselves. (U. S. Arredondo, 6 Pet., 691.)

The evidence having been admitted, defendants contend—

That the grant was invalid, because the grant was not made by the governor and subdelegates of the province, and therefore by one not having authority.

That it was but an incipient and inc*oh*ate title at best, as the grant was but a concession, upon which it was necessary that a further
131 title should be given in order to make it complete.

That the lands were never segregated from the royal domain by survey.

That the description of the lands granted was indefinite and could not sustain complainant's claim to the island.

That the reservation could not now be located.

That the island being the defence of the city of St. Augustine, having two military posts on it commanding the harbor of the principal city of Spain in the province, it could not have been the intention of the governor to make such a grant, and if made was invalid, as beyond his power.

That if anything was granted it was only Fish Island, the place of the orange grove.

If these objections are good, then the grant could not be sustained, so the master has spent much time in carefully investigating and considering the same.

The testimony shows (see pages of Record 37–48 and exhibits U & V):

Quesada was the governor of the province of East Florida from year 1792 to the year 1795.

That *in* March 22nd, 1792, Fish presented a petition praying that the "island" styled "the Island of the Vergel" he be placed in possession of, as it was the property of his deceased father; that at the sale of his father's property, ordered by the governor, Quesada, to pay the debts, no person would bid, and he offers to pay the sum of $1,605.00 for the same. (Record, page 51.)

Afterwards, April 19th, 1792, at the sale at auction of his father's property, he bid for and believed he had purchased the island and paid over the sum of $1,605.00 to the Government officials. (See Record, page 62.)

132 Finding persons tresspassing on the island by cutting wood on December 2nd (the year in the proceedings reads 1796, but is unquestionably an error, and should read 1794, as the further dates of the proceedings show), he petitioned the governor, setting out these tresp*a*s'es; that as he had purchased and paid for the place called the Vergel or Bergel, that he may be declared the owner, with the lands annexed, as his father had owned and possessed the same by grant in the time of the old Spaniards and British possession, and which was in area ten thousand acres, and that he be put in possession of the same, and this, whether by virtue of his father's right, his purchase, or as a new settler, offering to make proof of his claim. (See Record, page 36–7.)

On December 15th, 1794, Governor Quesada refer'ed the matter to the assessor-general and licentiate, Ortega, who on the same day reports that the lands, i. e., the island, may be granted to Fish as a new settler. (See Record, page 37.)

December 15th, 1794, Governor Quesada orders proof of Fish claim to be made before the Government notary.

The proof having been taken, on Feb'y 12th, 1795, Governor Quesada refers the same to the col'ector of the royal exchequer, who on Feb'y 27th, 1795, reports that while the proof shows that Fish is entitled to the grant of ten thousand acres, he ought only to have the place of the Vergel, and not the lands annexed, as only the trees on the Vergel were appraised, and that only was what was sold, and for which Fish paid $1,605.00.

That the appraisers omitted to appraise the lands, and therefore the lands were not sold, which lands should now be sold for the payment of his father's debts, giving Fish the preference as a purchaser, but
133 saw no objection to granting lands to Fish as a new settler. (See Record, page 37–42.)

March 26th, 1795, Governor Quesada orders the previous proceedings of the sale attached.

March 26th, 1795, proceedings having been attached, which prove that only the trees were appraised and sold. Governor orders copy delivered to Fish. (See record, page 47–8.)

Fish then presents a further petition "following up the proceedings" in order to have granted to him the ten thousand acres of land his father possessed, and which he insists he bought at the auction or thought he was buying and paid for &c. Prays that he may be granted the "island."

Ask his first proceedings be attached.

The licentiate Ortega, owing to the illness of Governor Quesada, orders proceedings asked for attached, which is done and proceedings referred to fiscal. (See record, page 48–50.)

May 4th, 1795. Fiscal reports.

That while it appears appraisers only value the trees at the Bergel, that Fish has proved this place named "The Vergel" consists of ten thousand acres of land, and was under the impression and belief that when he paid the $1,605.00 that is what he bought, and advises that the governor order the boundaries of the Vergel marked off to the extent of ten thousand acres, and that the defender of the estate be notified so he may appeal from this decision if desired, so that after this Fish may remain in possession of the said ten thousand acres of land annexed to the Vergel.

March 16th, 1795.

134 Batolome Morales, who is styled as the military and political governor of the province, on account of the illness of the incumbent, orders that the defender of the estate and attorney-general and Fish be notified. (Record, page 50–4.)

The defender of the estate (who was the attorney-general), on June 17th, 1795, reports to the governor approving the report of the fiscal of May 4th, 1795, and that the governor might grant the ten thousand acres of land at the place asked for. (Record, page 54–5.)

On June 17th, 1795, the grant is made by Batolome Morales, as political and military governor of East Florida, owing to the illness of the incumbent.

There are three translations of this grant, two in the American State Papers (record, page 56–7 and 59–60), and one a translation from the record in the surveyor-general's office by Fritot. (Complainant's Exhibit "V.")

The translations do not differ materially, and in the grant the governor sets out that Fish, having shown that his father owned and possessed the ten thousand acres of land at the place called the Vergel, which the present Fish offered to purchase for $1,605.00 and under which his purchase should be so considered, that whether from the right Fish has from such purchase, or of the ancient possession of his father of the ten thousand acres of land, or in consequence of his petition, that they be granted as a new settler, that he be placed in the possession of the lands, which it appears his father possessed and has already been laid off, with the exception of the quarries, also what was not granted to his said father,
135 which the King has reserved, renewing the boundaries of the reservation, if necessary, at the expense of the interested, by certain persons named in the said decree, "and let them be granted to him" on the terms above set forth, and that he be put in the possession &c. (Record, page 56–7, Exhibit "V.")

In the second translation in the American State Papers, the words used are "and he is granted the same on the terms above set forth." (Record, page 59–60.)

This grant or decree is attested by the licentiate Ortega and the notary, notice by the notary given to the different officers, and thereafter follows the report of the notary and other officers of the delivery of the possession of Anastacia Island to Fish, with the exception of the reservation.

This return of the proceedings of the possession is dated July 10th, 1795, and recites that being on the island of Anastacia, they took Fish by the hand and led him upon it, marking off the boundaries of the quarry, and that which was not granted to Fish, by marking off the same with four stakes, going over the whole island on horseback, and delivering to Fish the balance of the land, which possession was taken peaceably, quietly, and without contradiction. (Record, page 57–8.)

A careful examination of this testimony as adduced by these proceedings show conclusively that during the early part of the proceedings regular incumbent of the governor's office, Quesada, was cognizant of them up to the time when the proceedings of the sale were attached and a copy ordered delivered to Fish for such further action as he might deem proper to take; at this time it is evident that the governor became ill so as to unable to discharge the duties of his office.

The licentiate Ortega and the first officer of the comptroller's office, who were the regular officers of the province, and of the gov-
136 ernor's official household, so state in their report, this, and in Ortega's order upon the proceedings thereafter, ordering the proceedings turned over to the fiscal, and in the decree made May 16th, 1795, by Bartolome Morales, in which he orders these proceedings reported to the fiscal, he styles himself as political and military governor of the province, owing to the illness of the regular incumbent, which is attested by the licentiate Ortega and the notary, Zubezaratta, whom the report shows was the official notary of the Government and certified all the proceedings and the declarations subsequent to that by Morales, including the grant itself, contain the same recitals, attested with the same solemnity, in addition to which the attorney-general, fiscal, the solicitor of the royal treasury, and all the other officials of the province, recognize the authority of Morales, as acting governor in all these proceedings.

There is no testimony to contradict or contravert this, and it is beyond the question that Morales, on account of the illness of the governor, was during the latter part of these proceedings, and at the time that the grant was made, acting political and military governor of the province, invested with all the powers and duties of such office; being therefore shown to have been the officer de facto, and recognized not only as such but as the officer de jure, it rested with the defendants to show to the contrary, which they have failed to do.

Such appointments were made, and this existed ex necessitate rei. (2 White's Recopilation, 270.)

It is beyond question that the governors of East Florida were vested with full power and authority to make grants of land, and that they were not restricted as to quantity or the terms upon which such grants should be made. If the contrary is asserted, it rests with the defendants to show that. (See U. S. v. Clark, 8 Pet., 436, 8–1,006–7;
137 U. S. v. Arredondo, 6 Pet., 691, 8–568–9; White's Recopilation, 218, 8–1,010.)

This power was confer'ed not upon the governor but upon the office itself, the incumbent simply being the means by which the powers and duties of the office were executed; and Morales, being at the time political and military governor of the province, was thereby vested with full power to make the grant in question, and the defendants have failed to show by any sufficient evidence that he neither filled such a position or improperly executed the authority vested in him by virtue of the office.

Defendants contend that, while he was the acting governor, he was not the subdelegate; but this position is untenable, for all such powers were vested in the office of governor, and it is laid down in White's Recopilation, page 370–1, as to the powers of captains, generals, governors, and viceroys, "that they can act and dispatch in the province of their government in cases which have not been especially excepted, all that the prince who named them might or could do if he himself were present, and for these reasons and causes his jurisdiction must be held and judged more as a thing established than delegated."

Morales being governor, and by virtue of such having power to make the grant and the grant having been shown to have been in due form, was it a mere incipient or incohate title, as contended by defendants, or a complete and absolute grant?

Nowhere is found any set form of language, under the Spanish laws or ordinances in force in the provinces or even according to the customs and regulations, by which any grant was necessary to be evidenced or lands conveyed.

138 According to the dictates of the several governors of the provinces, some are in more formal terms than others, and it was sufficient, therefore, to constitute a complete grant, under the laws, customs, and regulations of Spain in force in the province of East Florida, that the governor should by his order and decree designate by some fit language that certain specified property was given to the person therein named as grantee; that the property granted be described with sufficient certainty and have been segregated from the royal domain.

It is not necessary that the decree of grant itself should specifically designate the property by metes and bounds, if it be designated therein

by reference, so that from the whole proceedings it is made sufficiently certain. If that is apparent it is sufficient.

The whole proceeding, commencing with the memorial and ending with the final decree, constituted the grant, and tried by these rules, the grant in question shows upon its face that there was granted to Fish, in absolute property, the island of Anastacia, excepting only the reservation of the King's Quarries and such lands as had not been granted to Fish's father, but had been reserved to the King, and he was placed in the possession, the reservation being again marked off.

It was evidently the intention, and the governor did grant to Fish the same lands which he had proved had been granted and possessed by his father, and for which Fish had paid the present government the sum of $1,605.00.

139 That these lands had already been laid off when the grant to his father had been made, and the reservation then marked off by the order of the Government, and the reinvestature of Fish with title, and the possession and the remarking off of the lands as reported by the persons designated for such purpose in the decree, completely identified the property and segregated it from the royal domain as effectually and conclusively as any survey could have done.

When the King's grant refers in general terms to a certainty, it contains as express mention of it as if the certainty had been expressed in the same charter. (United States v. Arredondo, 6 Pet., 691, 8–585.)

The description is sufficient if given by meets and bounds, whether natural or otherwise.

The severance from the public domain may be made by the grant itself, if it contain satisfactory boundaries or is well defined by courses and distances, or other authentic description of the tract. (Deautrive v. U. S., 11 Otto., 700, 28–871.)

This grant was perfect in itself, showed clearly the intention to grant the lands absolutely to the grantee, and directed delivery of the possession as his absolute property. The decree was the final determination of the proceedings and left nothing further to be done but the formal placing of the grantee in the possession of the property granted, which was done and reported; which report was attached to and became part of the official proceedings. No subsequent decree thereafter could have made it more binding or valid or would have been but a work of super-

140 erogation, and the master therefore concludes that the grant was a complete grant in form, and not an incipient or inchoate right which required any further action of the Government in order to perfect it.

The land granted was an island well known and defined by name; it therefore required no survey, as the grant of such by name, in itself, sufficiently segregated it from the royal domain and more effectually than any survey could have done, and as there was only reserved from the grant a small portion of the island, which reservation was at the time well known and defined, having been previously laid off and separated from the rest of the island by the previous act of the Government, previous to this grant.

The remarking was a matter of precaution on the part of the Government, in ordering them again laid off, if necessary, in order to distinctly define what the reservation was.

Known monuments which were a sufficient description at the time are not to be overthrown by knowledge of the present day acquired by late comers into the country. (United States v. Peratto, 19 How., 343, 15–681.)

There can be no question whatever from the beginning to the end of the proceeding that Fish desired and was granted the island of Anastasia, as in his petition it is prayed he be placed in possession of the island of the Vergel or the island of the Beautiful Orange Grove or Orchard, which he alleges was in extent about ten thousand acres. His father had possessed this and there still remained, at the time Fish petitioned, an orange grove upon the island which was the Fish homestead.

141 The defendants introduced evidence to show that the plantation of the orange grove constituted a tract in area not larger than one hundred acres, and is covered by 10, two, three, and six in section 29, Tp. 7. S., R. 30. E., and that it was called and known as Fish Island, and was and island in itself; but the master finds that Fish Island, so called, was not an island; it was not entirely surrounded by water; that it was and always had been a part of the island of Anastacia; that there were no quarries upon it, and being only one hundred acres in extent, could not have been alone the property that Fish desired a grant of, but of this "place of the Orange Grove with the lands annexed, aggregating ten thousand acres," which constituted the whole of the island of St. Anastacia, and that this was so intended by the governors and the officials of the province is clearly designated by the reports of the fiscal upon the proof before the notary and the reservation in the grant itself, as the only quarries lay on the east side of Anastacia Island, while the Fish homestead or orchard is on the west.

It is not improbable that the designation Fish Island applied to the island of Anastacia where Fish so claimed to own.

The contention, therefore, that the grant is indefinite is not sustained; neither is the contention that the reservation can not be definitely located, and that for that reason the grant is invalid.

It is in evidence that the reservation was properly marked off at the time of the making the grant and placing of Fish in possession; that the boundaries of that reservation have been since destroyed or obliterated, so that there may be some difficulty at the present day of ascertaining them; it is no reason or objection to the validity of the grant; it is simply a question of reestablishment of the boundaries.

Upon this point, however, the master is of the opinion that the boundaries of the reservation have been sufficiently established by the testimony for all purposes of this suit.

142 From the testimony of Sanchez (see complainant's Exhibit "G"), who is a very old man and has been acquainted with the property for more than sixty years, and for a long period of time in the actual possession of a portion of it as agent for the heirs of Fish, and in a position to know the location of such matters; it appears that there were two piles of stone at the intersection of the two well-known roads on the island, which Sanchez declares constituted the southwest corner of the King's Quarries, and that a line drawn from these piles of stone to the site of the old Spanish light or lookout house, and a line from the piles of stone eastwardly to the sea beach, would comprise within these lines the reservation.

The testimony of Hopkins: He made a survey and plat from the testimony as a starting point. (See testimony of Hopkins, 10-22 Ex. "L.")

The testimony of Harrington, who found the piles of stone (see testimony of Harrington, page 74–82); and

the testimony of Masters (see Masters' testimony, page 165–75), who testified as to the location and site of the Spanish lookout house, and that it was upon a reservation and contained an area of twenty acres, confirmed almost conclusively the location of the reservation in the grant within the lines already mentioned, which reservation included within it the lookout house, and which at the time was marked off was greater in area than it is to-day, owing to the encroachments of the sea.

143 It requires, therefore, something more than a mere objection unsupported by any sufficient testimony to destroy the location of this grant or of the reservation, and that it could not have intended to have been granted, because it was an island commanding the harbor of the city of St. Augustine.

The island was a barren wilderness, unfit for cultivation, except the small place where the vergel or orange grove was situate. It had no military fortifications upon it or works, except the lookout house and a small powder magazine near it. It was in the power of the governor to grant it (except what actually constituted any portion of the military reservation), and this having been expressly reserved and marked off and the balance of the lands having been shown to have been granted and delivered to Fish, there is nobody at this day who can question the discretion which the governor then exercised in making it.

It is further contended, in argument by the defendant, that there was another military post on the island at the place called Matanzas, but there is no testimony in the record that any such existed. It is true that there is a report from Governor Cespedes, in which he speaks in connection with the island of a round tower being situated on the inside of the bar at Matanzas, which is garrisoned by a few soldiers, but the location, the inside of the bay, may mean equally the inside of the bar on the mainland as the inside of the bar on the island, as the Matanzas River flows out between the mainland and the island, and while it is still true that the works at Matanzas and the lookout house were turned over by the Spanish Government to the United States as Government property on the cession of the province, it still remains indefinite from the testimony as to whether this post at Matanzas was

144 located on the island or not. If upon the island, then unquestionably it was part of the lands that were reserved from the grant, and was marked off when Fish was put in possession, and as between the United States and these claimants its area and location would still have to be determined; but it is not necessary for the purpose of this suit to determine as to whether it was part of the reservation or not.

In the case of Mitchell vs. United States (9 Pet., 711), where this question came up in relation to the reservation of St. Marks, it was decided that the grant was not void, because the military reservation was not excepted. The grant is good so far as it interfered with no prior right of the Crown. (9-291.)

Defendants further contested before the master that lands could not be purchased from the governors for money, and that the governor had

power only to grant to Fish as a new settler to the extent of the number of his family and slaves owned by him, and produced in evidence a schedule of what purported to be the number of his family and slaves in the memorial of one Perpal, styling himself the administrator of Fish, to have grant of 500 acres in Graham's Swamp confirmed by the United States Commissioners.

But this position is untenable, for the reason that while there were certain regulations presented to the master that existed in the Spanish Province that lands could not be sold for money, but that they were apportioned according to the settler's family and slaves, it is too apparent that lands were sold for money, as is evidenced by the very testimony which the defendants introduced of sales of lots in St. Augustine, and that the regulations of Morales and others offered to sustain the other position were passed by governors of West Florida subsequent
145 to the date of this grant, and further, that it is too well known to admit of contradiction, and has been so held and decided by the Supreme Court of the United States, that the governors were not limited by such regulations in making grants of land; besides, it nowheres appears in the proceedings upon which this grant is based that Fish asked for or was granted the same on account of the number of his family or slaves, or was required to perform any condition in relation thereto, except the payment of costs in marking off the boundaries of the reservation if necessary, but that the grant was asked for and made upon other considerations, which carried with it none of the conditions implied by such regulations, even if in force.

"The disposition of the royal domain in Florida was within the jurisdiction of the governors, the terms and extent were within his discretion, of the proper exercise of which this court has not the right or power to judge." (United States vs. Arredondo, 6 Pet., 69, 8–569.)

It was further contended by the defendants that the testimony of the witnesses produced by Fish before the notary in the proceedings of the grant was flimsy and could not have been true, owing to the age given of the witnesses and the improbability of their knowledge, but the master is of the opinion that this was a matter purely within the discretion and jurisdiction of the Spanish authorities and can not now be called into question.

It is also contended that perfect titles were kept in books in the escrivano's office; imperfect, in loose sheets, and put together with thread, in the office of the governor's secretary, where it is claimed this must have come from, as it is part of the files, and not part of the bound records, and the governor, Quesada, never knew of it and would not have sanctioned it.

146 This is but mere assumption unsupported by proof.

The proceedings bear on their face every stamp of genuineness; the testimony shows that they were known and officially participated in by all the members of the governor's official household; that Fish's possession and claim was notorious and open from 1795 'til and after the cession, and if improperly or surreptitiously made, it was within the province, as it was presumably within Quesada's knowledge, to have disallowed it. It is nowhere shown that all perfected titles were required to be recorded in the escrivano's office to be valid.

A grant made under a general power is good until actually disallowed, even if the power to disavow it exists. (U. S. vs. Clark, 8 Pet., 436, 8–1007.)

And all those facts and objections urged now were cognizant to the commissioners (in fact, such objections emanated from their investigation), yet they unhesitatingly reported this grant valid for confirmation.

Again, it is to be borne in mind that these are objections founded on assumption and not proof.

The condition of the payment of costs are the only conditions imposed in the grant, and this was not a condition precedent; and while there is no testimony going to show the costs of the marking off the boundaries were ever taxed or paid, the presumption is that if they were exacted they were discharged, and in any event would not invalidate it.

It is the conclusion of the master, therefore, that the grant is a valid grant of the island of St. Anastacia, less the reservation, which reservation was at the time distinctly marked off, and that such a grant vested in Jesse Fish and his heirs, the said island, with the exception
147 of what was reserved, in absolute property, and that he was placed in lawful possession thereof, which constituted a complete segregation from the royal domain, and that no further grant, title, or proceeding was necessary to perfect or render it complete.

The master has found from the testimony that the complainants, with the exception of Charles M. Furman, as administrator de bonis non cum testamento annexo of the estate of Chas. M. Furman, deceased (who the master finds has no interest as such), by descent, devise, and properly executed conveyances, are vested with the title and are seized and possessed of the lands granted to Jesse Fish by the Spanish Government, and that since the date of said grant and delivery of possession to Fish in 1795, complainants, their ancestors, devisors, and grantors have been in the actual possession and occupation of all *the* that part of said island known as the place of the Orange Grove, containing about one hundred acres, through themselves, their agents, servants, and tenants, up to the present time, and have claimed title to, and to have been in possession of, all the balance of said land granted, exercising divers acts of ownership over the same during said period.

Defendants introduced testimony to show that Venancio Sanchez, who was put in possession of the property as agent of Furman, deceased, claimed to have or had some claim against the property for monies advanced to Furman for expenditures and as an heir of some one, and that his son holds deeds from the State based on a tax sale and from McGruder & Logan, who claimed title from the State to part of the property. Further, that several persons are located on part of the said property, whom the complainants have brought suit in ejectment against; that the United States has set apart part of the property as a military reservation and for light-house purposes, and that two small Spanish grants are located on the property, of which or part of which divers persons are in the actual possession and that the South Beach Ry. is in possession of part.

148 It is sufficient to dispose of these matters that as to these lands the complainants claim no relief in this suit, and whatever may be the right of these persons or the United States, they are not

before this court, and their interest, if they possess any, not involved by this litigation. (U. S. vs. Arredondo, 6 Pet., 691, 8–569.)

The defendants to the suit are shown not to be in the actual occupation of the property against which relief as to them is sought. Those lands are wild, uncultivated, and in the actual possession of no person or persons, and the title of the complainant draws to it that legal seizen and possession in such case which is sufficient to maintain the bill and have the relief prayed.

"The law deems every man in the legal seizen and possession of the lands to which he has a perfect and complete title; his seizen and possession is coextensive with his right, and continues until he is ousted by actual adverse possession." (U. S. vs. Arredondo, 6 Pet., 691, 8–566.)

This also applied to the claim of Sanchez and his son. These lands are not involved, and they are not before this court, but under the testimony adduced here a court of equity would consider their possession the possession of the complainants.

Defendants introduce testimony to show that Jesse Fish and his slaves were occupying a tract of land of 500 acres at Graham's Swamp, and therefore could not have been at the Grove on Anastasia Island; but aside from the irrelevancy of such testimony to the issues, it is not shown that the slaves at Graham's Swamp were all the slaves he possessed. There is positive testimony to show the occupation of the place of the Orange Grove, and that was Fish's residence till he died, and it is not inconsistent that one might be in possession of several tracts of land.

149 The master has found that Jesse Fish died intestate; that this property descended to his mother, who was his sole heir, his alleged children by the negro slave Clara or Clarissa being bastards and not entitled to inheritance from him, and this by both the common law and the laws of Spain in force in the province at the date of this intercourse and his death. A slave could not control marriage, and such children, being slaves, had no inheritable blood.

That Sarah Fish died intestate, and that Rosalie Perpall, afterwards Furman, was her sole heir, Susana dying unmarried and without issue prior to the death of Sarah Fish, and her (Rosalie's) father, Perpall, being not entitled to inheritance from Sarah Fish (as the husband of Phoebe Fish, his wife, and mother of Rosalie) as the laws of the province then stood.

Defendants introduce what purported to be extracts from the minutes of the court to show that certain persons named and styled as executors of Sarah Fish should file their accounts. (Exhibit of Defendants, 1.)

The testimony of Vanancio Sanchez to the effect that he had heard of the will of Sarah Fish, and was shown a paper by the judge of the probate court which was said to be such will. (See testimony of Sanchez, page 212–17.)

But what said will contained, and what it devised or bequeathed, whether real or personal property, or where situated, is not shown.

As to the minutes of the probate court, the master ruled out the same as not having been properly authenticated.

From this whole testimony there is no evidence to show that a will existed save by inference, and nothing as to what it contains. Hence, for want of affirmative proof, the master holds that Sarah Fish died

intestate as to the property in question, the burden of proof being on those asserting the contrary, it being the rule of law that one
150 dies intestate as to his estate until the contrary is clearly shown.

The grant, being a valid grant, vested in Fish the absolute title, which by descent, devise, and conveyance has been lawfully vested in complainants, who have been shown to be seized and possessed of the lands in controversy, of which relief is sought against defendants. No one being in the actual occupancy of the same, it becomes necessary to decide if the acts of Congress applied to such a claim and bars these complainants of this action.

This grant was a perfect, complete, and valid grant to Fish, he having the legal title, seizen, and possession of the lands granted prior to Jany. 24th, 1818, and by the proper construction of the 8th article of the treaty of cession stood confirmed to him and his heirs in absolute property. (U. S. vs. Perchman, 7 Pet., 51, 8–617; U. S. vs. Arredondo, 6 Pet., 691, 8–566.)

As to such titles, perfect and complete grants, not mere inchoate rights and claims, they were confirmed by the treaty, and must be so recognized by the courts of this country. (U. S. vs. Wiggins, 14 Pet., 334, 10–481.)

Such titles are exempt from the 8th article of the treaty, and need no sanction from the legislative or judicial departments of this country. (U. S. vs. Wiggins, 14 Pet., 334, 10–489.)

Such title may be asserted in the courts of the United States independently of the 8th article. (U. S. vs. Perchman, 7 Pet., 51, 8–617; U. S. vs. Clark, 8 Pet., 436, 8–1014.)

The proprietors could bring suit to recover them without any action of Congress, and any question arising would be purely a judicial one. U. S. vs. Arredondo, 6 Pet., 691, 8–566.)

151 Perfect and complete titles at the date of the treaty are not subject to investigation and confirmation by this Government. (U. S. vs. Wiggins, 14 Pet., 334, 10–489.)

But *im*perfect titles, in*coh*ate rights, and claims. To this class of cases the 8th article was intended to apply, and by the act of Congress the claimant, if successful in proving his claim, was entitled to obtain a patent, merging his claim or in*coh*ate title in the legal one by virtue of such patent. It was to this class of cases that the 8th article of the treaty refers. (U. S. vs. Wiggins, 14 Pet., 334, 10–489.)

Treaties are to be regarded by the courts as the law of the land, and are to be so regarded by the courts when by their terms they act of themselves. (Foster and Elam vs. U. S., 2 Pet., 253, 7–435.)

If the treaty act directly, it repeals all acts of Congress repugnant to it. (Foster and Elam vs. U. S., 2 Pet., 235, 7–436.)

Since the decision of the Perchman Case the treaty of cession by which Florida was acquired has received but one construction, that by virtue of the 8th article it acted directly and required no legislation to carry it into effect; with reference to complete titles it therefore has become the law of the land as much as any act of Congress and must be so regarded and acted upon by the courts of this country.

Solicitors for the defendants cite the case of Boteller vs. Domingues, 130 U. S., 238, 32–928.

In that case, which was a suit in ejectment, plaintiff claimed title under a Mexican grant, but the claim had never been presented to the commissioners for confirmation under the California act of 1851.

152 An act to ascertain and settle the private-lands claims in the State of California.

Defendants claimed as preemption homestead settlers, claiming the same as public land of the United States.

Plaintiff contended that the act of 1851 requiring the presentation of such claims to the commissioners was invalid as in conflict with the treaty of Gaudalupe Hidalgo.

Second. That the act did not apply to perfect and complete titles, but only to inc*oh*ate and equitable ones.

The act provided that all land claims which shall not have been presented shall be deemed and so held and considered as part of the public domain of the United States.

The court, speaking to these propositions, say:

If the act be in conflict with the treaty, the courts are bound to follow the statutory enactments of this Government.

If the treaty was violated by the act, it was a matter for the political department, and not for the courts. 982–9.

At first blush it would seem that this decision was in direct conflict with the earlier decisions of that court, but a more careful examination of the questions involved will show that the decision in the California Case last cited is not applicable to the Florida treaty and not in conflict with the Percham Case and the cases of Arredondo and Foster and Elamo, cited above.

The treaty of Gaudalupe Hidalgo contained no such provisions as the treaty ceding the Floridas.

In the Mexican treaty the language of the 8th article is simply "that property now belonging to Mexicans not established there shall be inviolably respected."

153 By the 9th article "All Mexicans in the territory who shall not preserve that character shall be incorporated into the United States, and in the meantime shall be maintained and protected in the full enjoyment of their property," &c.

By the Florida treaty there was an express provision that all grants of land made before the 24th of January, 1818, shall stand ratified and confirmed.

When the terms of a treaty import a contract, it is to be addressed to the political department, and not to the courts; but when the treaty acts directly, it becomes the law of the land by express declaration of the Constitution of the United States, and its construction is no longer a political but a judicial question for the courts to pass upon. (Foster and Elam vs. U. S., 2 Pet., 253, 7–435–6.)

The treaty of Gaudalupe Hidalgo by its terms imported a contract simply. It required the action of Congress to carry out and enforce its provisions. It did not act directly, and the determination and construction of its terms was a political question. Hence, unlike the treaty of Florida, the court in the California Case decided, and properly, that its construction was not a judicial question, and the statute and not the treaty must be the rule of its decision.

The treaty by which the Floridas were ceded acted by itself in direct terms, and needed no legislation to carry it into effect in so far as perfect or complete grants were concerned; and such treaty being by the Constitution, as construed by the highest tribunal of this country, the law of the land, the acts of Congress to land claims in Florida must be construed by this rule already laid down for our guidance.

The first of these enactments was under date of May 8th, 1822, entitled An act for ascertaining claims and titles to lands within the Territory of Florida.

154 The legislation on this subject up to and including the act of May 23rd, 1828, had two objects in view.

The first was the ascertainment of what part of the Territory ceded to the United States was the property of the United States, the second.

By the later acts, to determine as to the validity of incohate rights and claims between the claimants and the United States; the act of 1828 coupled with the Missouri Act of 1824, providing the method of jurisdiction & procedure, by which the claimants might sue the United States in its own courts for that purpose.

It is true that the act of 1822, section four, declares that all valid claims prior to Jany. 24th, 1818, shall be presented to the commissioners, and any claim not presented within the time limited is to be held void or of no effect.

Up to the act of 1828, the commissioners or register and receiver, as their successor, were required to receive and report for the action of Congress, the claims so presented, the Congress having confirmed all the claims reported valid by the commissioners by the first and second sections of the act of 1828, to the extent of one league square, by the 6th section of that act declared that all claims to land within the Territory of Florida embraced by the treaty between Spain and the United States, which were not decided and finally settled under the foregoing provisions of this act, containing a greater quantity of land than the commissioners were authorized to decide (which was 3,500 acres) and which have not been reported as antedated or forged, shall be received and adjudicated by the judge of the superior court of the district in which the lands lay, according to the provisions of the act of 1824, known as the "Missouri Act;" by the 12th section it is declared that any claims to lands, tenements or hereditaments, within the perview of this act, which

155 shall not be brought before said court within one year &c. shall be forever barred, both at law and in equity, and no other action at common law or proceedings in equity shall ever thereafter be sustained in any court whatever; the act of 1828 must therefore be construed with the Missouri Act of 1824, and in the case of the United States v. Clark, 8 Pet., 436, it is declared that the act of 1824, did not define the jurisdiction conferred on the Florida courts by the act of 1836, but did define the mode of procedure and the rules of decision.

The act of 1830 was an amendment to the act of 1828. (8–1,012.)

In the case of the United States vs. Arredondo (6 Pet., 691), it is decided that the act of 1824 forms part of the act of 1828, and furnishes rules by which the court is to be guided in assuming and exercising jurisdiction. (8–554.)

The act of May 26th, 1830, entitled "An act to provide for the final settlement of land claims in Florida," had for its object the extension of

the jurisdiction of the court to all existing claims not finally disposed of. (United States v. Clark, 8 Pet., 435. 8–1,004.)

In the Arredondo Case (6 Pet., 691), the court says: The 6th section of the act of 1828 included all claims (the former laws included only those specially designated). This embraces all not before decided, &c.

Construing, therefore, the provisions of these acts in the light of the treaty, and the construction of the Supreme Court upon it, and the several acts as above referred to, and of the intention of Congress to be gathered from all the surrounding circumstances, it is clearly apparent
156 that to uphold these enactments of Congress so as not to bring them in conflict with the express provisions of the treaty, in regard to complete and perfect titles, we must have reference to the objects to be obtained by this legislation, and as to what is meant by the terms "all claims" and the language "within the perview of the act."

The 8th article of the treaty, after declaring that all complete titles should stand confirmed, goes on to provide for the protection to be given to all incohate rights and claims, and the Supreme Court having in the case of U. S. v. Wiggins, 14 Pet., 334, determined that complete or perfect titles were exempt from the provisions of this article, it was therefore only claims within the provisions of this article which Congress had the power to legislate upon, as so far as these claims were concerned; the treaty did not execute itself and therefore addressed itself to the political department, which had power to act upon it.

It is true that the courts of the United States, instead of the political departments of the Government, have acted on these claims, but as clearly defined and laid down in the case of the United States v. Arredondo, 6 Pet., 691, the political departments of the Government instead of exercising the privilege accorded it by the terms of the treaty, in so far as these incohate claims were concerned, divested itself or that power by the acts of Congress and conferred it upon the courts to determine the questions between the United States and the claimants. (8–563.)

The language, therefore, in the act "all claims" "embraced by the treaty" "within the perview of the act" can mean nothing else than incohate or imperfect claims, with which alone the United States had the right to deal.

157 And this is made more clear by an examination of the acts passed for a similar purpose in regard to land claims in Louisiana, under the treaty with France, which treaty, like the treaty of Gaudalupe Hidalgo, did not act directly of itself, and which acts, by the clear and express terms, conferred no jurisdiction on the courts to pass upon anything but inchoate and incomplete titles. (Fremont v. United States, 542, 15–244.)

And, by the provisions of the 8th section of the act of 1828, whereby so much of the Missouri act of 1824 as required claimants to make adverse claimants parties, is declared not applicable to proceedings before the Florida courts; and section 13 of the same act declares that the decisions of the courts shall be conclusive between the United States and claimants only, and not to effect the interest of third persons.

In the case of the United States v. Perchman (7 Pet., 51), the court says, in passing upon these Florida acts, in a case in which the claim was rejected by the commissioners, "It is impossible Congress intended to

submit the validity of such titles (perfect and complete) to the determination of the commissioners;" "And that the provisions of the act of 1823 (the Florida act), that claims not presented should be void," can only mean "shall be held void by the commissioners and not allowed by them"—not that such claims are void.

The act of 1828 was directed solely to the confirmation and not to the amendment of claims.

And the same construction must be given to the 6th section of the act of 1828, transferring the jurisdiction from the commissioners and register and receiver to the court: "That these titles, so far as they were consummated (meaning perfect and complete), may be asserted in the courts of the United States, independently of the 8th article." (Ibid., 7 Pet., 51.)

158 And that it was therefore impossible Congress intended to submit the validity of such titles for determination of the courts.

Defendant's counsel have cited in argument that if these acts did not apply to perfect and complete titles then the courts of the United States, under the act, had no jurisdiction to pass upon the same, and cite to us the case of the United States v. Marvin. (3 How., 620.)

But the only question decided in that case was that the claimant having failed to present his petition to the court within the time limited by the act, that the court had no jurisdiction of the same. (11–753.)

This does not decide the question raised, and we can not find that the question has ever been presented to the court in any of these decisions, namely: That the court had no jurisdiction to pass upon perfect and complete titles, and it is no answer to the construction given here to these acts that because perfect and complete titles were presented to the court and passed upon in which the question was never raised before the court, that therefore this construction, that the acts did not apply to such, is erroneous.

The jurisdiction conferred on the courts was a special and limited jurisdiction, it was a special provision by which the United States permitted itself to be sued. Without such a provision no suit could have been brought against the United States, and when the time limited on the acts for bringing suits expired the court lost the power to consider them; but this does not say or mean that the courts ever acquired any jurisdiction of perfect or complete titles.

The bar of the act of 1828, therefore, could not apply to the claim in question, this claim having been shown to have been a complete and perfect title, to which these acts in nowise were directed; and the provision that all claims not so presented (meaning all inchoate and incomplete claim) should be barred both at law and in equity, and no other action should ever thereafter be sustained in any court

159 whatsoever; meaning that no claimants under such titles, who failed and neglected to present and have the court pass upon his claim could ever thereafter sue the United States, or bring or sustain an action upon it in any other court, as no court had jurisdiction of imperfect and inchoate titles unless expressly given to it by the acts of Congress. (Burgess v. Grey, 16 How., 62, 14–845–7.)

Counsel cite the case of Boutellier v. Domingues, 32–930, where the Supreme Court, in passing upon the California act of 1851, declared that

the failure of the claimant to present his claim within a period limited by this act to the commissioners appointed for such purpose, and who were by the act declared a judicial body, from whom an appeal lay to the courts, barred his claim, notwithstanding it was a perfect claim, and that he therefore could not recover in his action of ejectment upon such a title against the preemption occupant under the laws of the United States; but as has already been shown that the court in this case followed the literal language of the ststute because of the fact that under that treaty Congress was empowered to carry it into effect by such enactments, and that the court in such cases was bound by the act and not by the treaty, the doctrine in this case is not applicable to the case at bar, and the court in that case refe'red to the case of Fremont v. The United States, above cited, and quoted from the opinion of Chief Justice Taney, refer'ing to this treaty of Gaudalupe Hidalgo, "That the 8th article of this (the Mexican treaty) treaty embraces not only inchoate or equitable titles, but legal titles also, and required them all to undergo examination and to be passed upon * * *: in this respect the act of 1851 differs from the act of 1824, under which the claims in Louisiana and Florida were decided.

"The jurisdiction of the court in this case (i. e., Florida case) was confined to inchoate equitable titles, which required some other act of the Government to vest in the party the legal title or full ownership; if he claims from the former Government by full and perfect title, he was left to assert it in the ordinary forms of law upon the documents under which he claimed; the court had no power to sanction or confirm it by proceedings under the act of 1824, or the subsequent laws extending its provisions."

This therefore disposes of the contention of the defendants that the Florida acts in relation to private land claims barred perfect and complete titles, such as the case at bar, and therefore the limitations provided in such acts, the claim not having been presented to and passed upon by the superior court for the Territory of East Florida, did not apply, and that the complainants in this case were not barred of their action, but under the terms of the treaty, having a perfect and complete title, were left to assert it in the ordinary forms of law upon the documents under which they claimed.

As the title was perfect and complete in itself, the United States, under the treaty, got no right or estate, legal or equitable, in the lands granted to him (Fish); it could assert no interest or claim therein, and no legislation, patent, or action of this Government was necessary to confirm the same or give it any validity.

Before these decisions were pronounced as the proper construction of the law of the land—i. e., U. S. vs. Perchman and Arredondo—the first opinion by no less a person than Chief Justice Marshal, the Congress of the United States had passed these divers acts for the settlement of private land claims in Florida, commencing in 1822 and up to the act of 1830, by which first act it was thought to vest in a board of commissioners power to enquire into and report upon the claims.

The commissioners under the Florida act were not made a judicial tribunal.

This claim of Fish, among others, was presented to the commissioners of East Florida, and approved by them and reported to Congress through

the Secretary of the Treasury in February, 1826, for confirmation.
161 By the act of May 23rd, 1828, by the first and second sections, Congress confirmed these claims, the claim of Fish among them.

While it is true they purported to limit the extent of the confirmation in area to one league square, it still remains that as to the validity and genuineness of the grant and title of Fish and his heirs Congress by this act confirmed the same, and by that act, irrespective of the treaty of cession, the United States was estopped to question its validity.

It is part of the political history of the country which gave rise to such enactments, and especially the limitation of area to these confirmed grants, that the United States was not then advised as to the power of Spanish authority to grant larger quantities of land than one league square, and by such acts sought to limit such confirmations until further light on the subject was obtained as to the power of the Spanish authorities in such matters. Irrespective of the treaty, the confirmation of this grant by the act of 1828 not only affirmed its validity, but in effect operated to confirm it to the full extent of the area of lands granted by the grant of Spain to Fish, if the authorities making the grant at the time possessed power to grant such an area, or an area in excess of one league square. In other words, if the Spanish authorities possessed the authority to grant to Fish the ten thousand acres of land, then this act confirmed the title to the heirs of Fish to the whole extent of the grant, and not simply to one league square. When the Supreme Court of the United States decided that the Spanish authorities in East Florida were vested with power to grant lands without restriction as to area or extent it announced no new rule of decision, legislated no new law into existance, but simply decided that it found such was the law as it had existed, and their decisions must necessarily operate upon the construction of the acts of Congress by wiping out the limited confirmation as to the area of this grant.
162 (U. S. v. Arredondo, 6 Pet., 691, 8–568–9; U. S. v. Wiggins, 14 Pet., 334, 10–688–9.)

If this be true, then it is decisive of the question in itself, and the act was a grant in itself to the heirs of Fish, as operative as the swamp act which vested title in the States, but which only became operative as to the particular lands granted when surveyed and classified as swamp, but related back as to investiture of title to the date of the act; so the act of 1828 only awaited the decision of the Supreme Court declaratory of what the law was as to the extent of the powers of the Spanish governors, which, when declared, embraced the whole grant to Fish relating back to the date of the act as declaratory of the extent of the grant.

A grant may be made by law as well as by patent, and a confirmation is equivalent to a grant from the United States. (U. S. v. Rodman, 15 Pet., 730, 10–1152–4.)

The conclusions above arrived at must also dispose of the question made, that the decision of the Land Department of the United States was res adjudicata.

It is true as a general rule that the Land Department has the power to make and correct the surveys of the public lands, and that the action of that department within the scope of its authority is unassa'lable except by direct attack.

That the Secretary of the Interior has the revisory power over the land commissioners, and may correct, affirm, or disapprove surveys,

whether the same be called to his attention by appeal or by any means. (Knight v. United States Land Co., 142 U. S., 16–35; 979–81.)

And that as to controverted facts passed upon by the Land Depart-
163 ment within the scope of its authority, that its decision is final, but that as to questions of law or fraud practised upon the department, the courts have the power to review its decisions. (Shipley v. Cowen, 91 U. S., 340, 23–427.)

It is further to be considered, as cited by counsel for the defendants, that such decisions, even where they are not conclusive, are of great weight, and the master has carefully considered the decision of the honorable Secretary of the Interior in these cases, but that decision shows that it was based entirely upon the construction (in the opinion of the honorable Secretary of the Interior) of the acts to settle private claims in Florida above referred to, and being purely a question of law, this court has still the power to review the same or pass independently upon the questions presented to it in this case, irrespective of such decision.

It is to be borne in mind, also, that basis of the decision of the Land Department, even upon questions of fact, is its authority to act in any particular case, and unless the land was part of the public domain of the United States the Land Department acted without the scope of its authority.

As it has been shown that the land included in the grant in question did not pass to the United States, but was expressly reserved from the territory ceded by the stipulations of the treaty, the United States acquired no title to it or any interest therein, and it was exempt from the interference of the United States by the action of any of its departments of Government. The mere fact that the Land Department, acting upon the assumption that this land was the property of the United States and the extending of the public surveys over it in 1833, and allowed certain persons to make homestead entries thereon, did not give the United States any right or title therein, but on the other hand was an act of trespass upon private property.

There is no rule or principle known to our system under which private property can be taken from one person and transferred to
164 another for the private use or benefit of such other person, whether by general law or private enactment. (Cooley on Constitutional Limitations, chap. 11, 357.)

And the Constitution of the United States expressly prohibits the taking of private property for either the public or private use of another, except for the purpose of taxation, punishment for treason or other crimes, or in the exercise of eminent domain, nothing of which exists in this case.

If, as counsel for defendants contend, the mere surveying of private property by the United States and setting up and claiming it by the Land Department of this Government would constitute office found on the part of the United States, and therefore create a forfeiture of private property, then the Constitution of the United States would be a meaningless instrument, and the rights guaranteed by it, to be protected in the enjoyment of property, would be but a senseless enactment of words.

It was further contended that the United States, by claiming this property as part of the public domain, and allowing homestead entries to be

made upon a portion of it, and by certain Presidential orders purporting to reserve certain portions for light-house and military purposes, part of which lands set apart under said orders the United States being in the actual occupation of, that the United States therefore became seized and possessed of the whole property, and were by construction of law and the possession of a portion of it in the actual possession of the whole of the island, and especially of the property claimed by the defendants, and against which complainants pray relief in this suit.

While it is a general rule of law that the Government, in its sovereign right, is to be deemed in the actual possession at all times of the property owned by it, this presumption does not arise as to the property
165 to which it has no title, and therefore the Government stands in no better position in regard to the seizen and possession of the property than a private individual, complainants in this case being possessed with the absolute legal title to the property, their seizen and possession is coextensive with their rights, and as against all persons not in the actual occupation, advers'ly to them of the property, they must be deemed to have the seizen and possession, even as against the United States in this case, who is shown to have no title thereto.

Counsel for defendants have contended that this is in effect a suit against the State and the United States, affecting and passing upon their rights indirectly, which could not be done directly, as they could not be sued, and therefore the bill can not be maintained, and that the patents from the United States import not only verity, but are conclusive as to title in the United States, and can not be attacked collaterally.

The State of Florida, by the act creating the Board of Trustees of the Internal Improvement Fund, and vesting them in its title to lands, permits them to sue and be sued, and the State therefore has no reason to complain if by a decision of a court of competent jurisdiction in a suit to which its trustees are a party it is declared the title such trustees assert is invalid.

While true as a general rule, a patent from the United States, given in its sover'ign capacity, is not subject to collateral attack, is subject, however, to the fundamental test. Did the grantor, the United States, have title to thing granted, or did the officer issuing have authority so to do?

And either or both of them are subject to investigation whenever title is asserted under a patent, tho' the onus of proving the want of such title or authority is on the party asserting the want of it.

And this attack may be made upon the patent equally in a
166 court of law or equity. (Knight v. U. S. Land Co., 142 U. S., 16, 35–979.)

It having been shown that the United States, as to the land involved, acquired and had no title, the patents are absolutely void, and, being so, could convey no right, and became the bases for no claim.

The United States acquired no title or interest in the ceded territory, already granted by the King of Spain, prior to Jan'y 24th, 1818. (United States v. Arredondo, 6 Pet., 691, 8–564–6.)

That the decree of a court which declares that a patent of the United States to land is void for want of any title in the grantor is in effect a declaration which passes upon the title of the sovereign in such respect,

without its being party to the suit, and against whom a suit may not be brought, is not beyond its power, its effect is to properly deny the assertion or claim of any right set up by the patentee thereunder in that proceeding or any proceeding brought thereon, and to deny to this patent any quality or effect as evidence.

The sovereign is not directly affected as to any claim which it may choose to thereafter directly assert by any judicial proceeding. The master has carefully examined at length all the authorities cited by the defendant and sees nothing in them to change the conclusion at which he has arrived.

For the reasons given, the master comes to the conclusion that the United States acquired no title or right to the property in question, and therefore had none to convey to the State of Florida, and the defendants having no title, and no person being in the occupancy of the property against which the relief is sought, that this bill may be maintained and that the complainants are entitled to the relief prayed as to the lands specifically described in the master's findings.

Respectfully submitted.

H. H. BUCKMAN, *Master.*

(Entered:) Opinion master. Filed with master's findings & report. Filed this 24 day of Sept., 1897. E. O. Locke, clerk, by Louis Starke, deputy clerk.

167 In circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL.)
vs.
HENRY L. MITCHELL, GOVERNOR, ET AL.)

Exceptions taken by Henry L. Mitchell et al., trustees, parties defendant, and H. S. Cummings, defendant, to the report of the testimony and findings of the special master to whom the cause was referred, filed on the 24th day of September, A. D. 1897, and also exceptions of Fla. Coast Line Canal & Trans. Co. & St. Johns Railway Company to the same.

First exception: For that the master has found as a matter of fact Sarah Fish died at or on the Island of Anastasia.

Second exception: For that the master has found as a matter of fact that the island of the Orange Grove was not sold at the auction sale of the property of the estate of Jesse Fish's father, and in finding that Jesse Fish offered to pay to the governor of East Florida $1,605 for said property, as property not sold at said auction, and in not finding that said Fish bid the said sum at said auction as the price of said Orange Grove.

Third exception: For tha' the master has found as a matter of fact that during the pendency of proceedings upon the petition of Fish, Governor Quesada became so ill as to be unable to discharge the duties of his office.

168 Fourth exception: For that the master has found as a matter of fact that the several duties and functions developing upon the

governor of East Florida were discharged by various officials who were acting pro tem.

Fifth exception: For that the master has found as a matter of fact that Bartolome Morales was acting as the political and military governor of East Florida, pro tem., from and including the 16th day of May to and including the 17th day of June, A. D. 1795.

Sixth exception: For that the master hath found as a matter of fact that the plantation of the Orange Grove and lands annexed to it contained about 10,000 acres of land.

Seventh exception: For that the master hath found as a matter of fact that the plantation of the Orange Grove and the lands annexed to it comprized the whole of Anastasia Island with the exception of a small strip bordering the Atlantic Ocean known as the Kings Quarries.

Eighth exception: For that the master hath found as a matter of fact that from July 10th, 1795, until his death Jesse Fish claimed and possessed the whole of Anastasia Island with the exception of the small strip claimed to have been known as the Kings Quarries, and that, after the death of Jesse, Sarah Fish continued to reside on and possess said land.

Ninth exception: For that the master hath found as a matter of law that Venancio Sanchez has been in possession of the Orange Grove from some time about the year 1856 up to the present time, and still
169 remains in possession, claiming title to the whole island as the property of the Fish or Furman heirs.

Tenth exception: For that the master hath found as a matter of fact that the pile of stone near the intersection of the roads was the southwest corner of the reservation in the alleged grant to Fish, and that a line from said pile of stones to the lookout house was the west boundry of the reservations made in the same.

Eleventh exception: For that the master hath found as a matter of fact that the lands east of the line drawn from the pile of stones to the lookout house were the lands marked off and reserved from the alleged grant to Fish.

Twelfth exception: For that the master hath found as a matter of fact that the lands east of a line from the pile of stones at the intersection of the roads and the old lookout house is the only portion of the royal domain on Anastasia Island which existed at the time of the cession of Florida by Spain which could lawfully have been delivered to the United States.

Thirteenth exception: For that the master hath found as a matter of fact that it does not appear whether by permit or otherwise was done the quarrying of stone on Anastasia Island by people indiscriminately.

Fourteenth exception: For that the master hath found as a matter of fact that all homestead entries made on Anastasia Island have either been cancelled or abandoned.

Fifteenth exception: For that the master hath found as a matter
170 of fact that none of the defendants by themselves or their agents have been or were at the date of filing this bill in actual possession of the lands claimed by them.

Sixteenth exception: For that the master hath found as a matter of mixed law and *and* fact that Sarah Fish died intestate as to all the real

estate known as Anastasia Island and the title to her property by descent in Charles M. Furman.

Seventeenth exception: For that the master hath found as a matter of mixed law and fact that Julia K. Furman conveyed her right, title, and inte'st in Anastasia Island by deed dated Sept. 19th, 1889, and that Iruin K. Furman conveyed his interests in said lands by deed dated Aug. 5th, 1885.

Eighteenth exception: For that the master hath found as a matter of mixed law and fact that from the 16th day of May, 1795, up to and including the 17th day of June, 1795, Bartolome Morales was the polit'cal and military governor of the province of East Florida, pro tem., with full power as such to discharge and exercise the duties and powers of the office of governor and was recognized as such by all the officials of the province.

Nineteenth exception: For that the master hath found as a matter of mixed law and fact that on the 19th day of June, 1795, Morales, as governor, granted Jessie Fish by his decree and grant in due form and absolute property the whole of the island known as St. Anastasia with the exception of what was known as the King's Quarries, and also that which was not granted to the father of said Fish and was reserved to the King, and by said order and decree directed that Fish be placed in absolute possession of the whole of said island with the exception aforesaid.

171 Twentieth exception: For that the master hath found as a matter of mixed law and fact that the alleged decree of Morales constituted an absolute grant of Anastasia Island, except the reservations named in the last exception, to said Fish in fee and without condition except the payment of costs.

Twenty-first exception: For that the master hath found as a matter of mixed law and fact that the possession of the whole Anastasia Island except the reservation named in the 19th exception was delivered to Jesse Fish on July 16th, 1795.

Twenty-second exception: For that the master hath found as a matter of mixed law and fact that Solano, Lorente, and Arribas were the persons named in the alleged decree of Morales.

Twenty-third exception: For that the master found as a matter of mixed law and fact that prior to A. D. 1795 the lands on Anastasia Island had been laid off and segregated to the father of Jesse Fish, the exception of the King's Quarries and Reservation having at that time been previously seperated and their bound'ry defined from the balance of the island.

Twenty-fourth exception: For that the master hath found as a matter of mixed law and fact that the lands alleged to have been granted to Fish in 1795 were completely and sufficiently segregated from the royal domain by act of the alleged marking of bound'ries and placing Fish in possession.

Twenty-fifth exception: For that the master hath found as a matter of mixed law and fact that the alleged grant, the marking of bound'ries, and the placing of Fish in possession constituted a complete and

172 perfect title to the whole Anastasia Island with the exception of the lands so marked of' as reserved.

Twenty-sixth exception: For that the master hath found as a matter of mixed law and fact that from 1795 Jesse Fish was the sole owner in fee by lawful title and possessed of the whole of the island of Anastasia with the exception of the lands marked off as reserved.

Twenty-seventh exception: For that the master hath failed to find as a matter of mixed law and fact that, as testified by Rogero and Sanchez, W. J. Sanchez had taken a deed of conveyance in fee from Rogero of lots 2 & 3, & Sec. 29, T. 7, R. 30, embracing the Bergal plantation and homestead of Fish, prior to the bringing of this suit.

Twenty-eighth exception: For that the master hath failed to find that the concession made by Quesada to Rodreguiz in A. D. 1798 was under the Spanish Government perfected into a royal title in the year 1818, and embraced lands which the master finds were granted to Fish in 1795.

Twenty-ninth exception: For that the master hath found as a matter of mixed law and fact that the reservation from the grant to Fish and the lands not granted to his father (?) which were reserved to the King, embraces at this day, according to the United States surveys, nearly all lot 1, nearly all lot 4, the east portion of lot 9, all of lots 5 and 10 in section 21, all of lots 1, 2, 3, 4, and 5, the northern portion of lots 6, 7, and 8, of Sec. 27, the N. portion of SE. 4, the NE. 4 of NE. 4, the E. fractional part of NW. 4 of NE. 4, nearly all of SE. 4 of NE. 4, Sec. 28, T. 7 S., R. 30 E.

Thirtieth exception: For that the master hath found as a mat-
173 ter of law that by virtue of the acts of Congress and the act of Florida of 1855, known as the "internal improvement act," all the equitable title held by the United States became vested in the board of trustees, defendants.

Thirty-first exception: (a) For that the master hath found as a matter of law that the alleged grant to Fish was a valid and complete title. (b) That the lands were properly segregated from the public domain prior to Jan. 24th, 1818. (c) That said alleged grant stood ratified and confirmed by virtue of the 8th article of the treaty of cession.

Thirty-second exception: For that the master hath found as a matter of law that the alleged grant was confirmed as to its validity by the United States in the act of May 23rd, 1828.

Thirty-third exception: For that the master hath found as a matter of law that the 12th section of the act of 1828, and the acts supplemented thereto and amendatory thereof, enacted by Congress as to private land claims in Florida did not apply to complete valid grants of land properly segregated and in possession of the grantees prior to Jan. 24th, 1818.

Thirty-fourth exception: For that the master hath found as a matter of law that the 12th section of the act of May 23rd, 1828, did and does not apply to the alleged grant to Fish so as to bar the present action.

Thirty-fifth exception: For that the master hath found as a matter of law that this court is not bound by the decision of the Secretary of the Interior had upon this alleged grant.

174 Thirty-sixth exception: For that the master hath found that the complainants are vested with the valid, legal, and equitable title to the lands in controversy, and are seized and possessed of the same with such seizin as is sufficient to maintain the bill.

Thirty-seventh exception: For that the master hath found that the act of Congress of 1828, and the acts amendatory and supplementary thereto, do not operate to bar the complainants of this action.

Thirty-eighth exception: For that the master hath found that the United States had and acquired no right or title to the lands in controversy.

Thirty-ninth exception: For that the master hath found that the State of Florida acquired no right or title to the lands selected by it under the act of 1880, their approval and patent.

Fortieth exception: For that the master hath found that the complainants are entitled to have removed as a cloud upon their title the claims of title of the State of Florida now pending before the Land Department of the United States for lots 2 & 7, Sec. 21, and lots 1 & 4, Sec. 32, and lots 2, 5, & 6 of Sec. 34, T. 7, R. 30 east.

Forty-first exception: For that the master hath found that the complainants are entitled to have declared void as clouds upon their title the patents issued by the United States to the State of Florida, to lands in T. 7, R. 30 east.

Forty-second exception: For that the master failed to find that the complainants' bill should be dismissed upon one or more of the
175 following grounds:

175 (1) That the suit was in reality against the State of Florida.

(2) Because there was no evidence offered to identify what lands were delivered to Fish and what were excluded from the delivery, and because of the inconsistancy between the allegations of the bill and the proof offered descriptive of the lands claimed.

(3) Because the complainants showed no authority under the laws existing in East Florida for transfer of title to lands by delivery of possession.

(4) Because complainants failed to prove possession of even the homestead of Fish on Fish's Island and proved nothing as to possession of the lands surveyed into sections and lots on Anastasia Island.

(5) Because any decree must be against the United States under the allegation of the bill.

(6) Because under the allegation of the bill the suit can only be maintained in the name of the United States for cancellation of patents.

(7) Because the evidence of title offered were loose papers from the public archives, which, if genuine, are only evidence of an incipient title.

(8) Because the evidence of title offered was so mutilated as not to be receivable as evidence.

(9) Because on the face of the papers offered as evidence it appears that the petition of Fish was refused.

(10) Because the alleged concession is by its words "made upon the terms above set forth," and no evidence of compliance was presented.

(11) Because the alleged concession was not made by "the lawful authorities" of the King of Spain, and no evidance was offered to show that Morales had power to grant lands.

(12) Because the bill as framed alleges a grant ratified by the
176 treaty with Spain, and by the decisions of the Supreme Court *Court* in U. S. vs. Wiggins, 14th Pet., 350, and U. S. vs. Mitchel, 9

Pet., 711, it has been held that the treaty ratified only incipient titles, but perfect titles were exempt from the 8th article of the treaty.

(13) Because on the allegations of their bill complainants' remedy is by mandamus to compel the issuance of a patent for lands unpatented, and by action in the name of the United States for cancellation of the patents issued.

(14) Because the bill alleged title by descent, but the proof is that Sarah Fish died intestate.

(15) Because Sarah Fish is shown to be an alien who could not inherit by the law of Spain.

(16) Because the evidence shows that the Land Department has determined the title to the lands in controversy in a proceeding to which complainants were a party and on their own petition, and complainants have failed to aver and prove that this determination was wholly upon a matter of law.

(17) Because from the evidence offered, and the findings of the master that he is unable to determine the boundaries of the lands reserved in the alleged grant, it is apparent that the Land Department has presented for its determination a question of fact within its jurisdiction, and its determination against the complainants' right is conclusive.

(18) Because the act of 1828 has been construed by the Supreme Court of the United States to embrace perfect title, and the master had no right to disregard the plain terms of the court.

Wherefore the said defendants do except the said general report and findings, and appeal therefrom to the judgment of this court.

W. W. DEWHURST,
Solicitor for Defendants Henry L. Mitchell et al., trustee, etc., and for Defendant Cummings.

PARROT & HAMLIN,
Solicitors for the Fla. Coast Line Canal & Trans. Co. & St. Johns Ry. Co.

(Endorsed:) Exceptions to report of the testimony & findings of special master. Filed Oct. 18/97. E. O. Locke, clerk.

177 In the circuit court of the United States, southern district of Florida.

CHARLES M. FURMAN ET AL.
vs.
HENRY L. MITCHEL, GOVERNOR, ET AL.

The exceptions of Henry L. Mitchell et al., the trustees of the internal improvement fund of the State of Florida, and H. S. Cummings to the opinion and report of the special master, H. H. Buckman, esq., filed in this cause on the 24th day of September, A. D. 1897, & also exceptions of Fla. Coast Line Canal & Trans. Company & St. Johns Railway Company to the same.

First exception: For that the master held and reported as evidence such parts of the American State Papers as purported to be copies of the original papers on file in the public archives and admitted as evidence

the reports contained therein, there being no allegation in the bill that the Fish claim was ever presented to commissioners or reported on.

Second exception: For that the master held and reported as evidence the copies of the alleged proceedings of Jesse Fish for the possession of the Bergal from the surveyor-general's office, offered by the complainants against the objection of the defendants that said papers appeared upon their faces to be mutilated and the evidence offered in support of said objection, and also because it appeared that said documents were only evidence of a concession and not evidence of title.

178 Third exception: For that the master has reported that Quesada was governor from A. D. 1792 to A. D. 1795, evidence being that Quesada was governor from 1790 to 1796.

Fourth exception: For that the master, in reporting the testimony as to the petition of Fish, has wholly mistaken the nature of the original petition of Fish, the master stating the same as if Fish on March 22nd, 1792, tendered an offer to buy the island of the orange grove, whereas in fact he claims he bought it at auction and petitions to be put in possession of the place he bought.

Fifth exception: For that the master in reporting the testimony for the original petition of Fish confuses the island of the orange grove with Anastasia Island.

Sixth exception: For that the master reports that on March 22nd, 1792, Fish petitioned to be put in possession of "the island styled Vergil," and that afterwards, that on April 19th, 1792, at the auction of his father's property he bid for "the island," without advising the court that "the island" bid for was not Anastasia Island.

Seventh exception: For that the master reports that the testimony shows that Fish believed he had purchased "the island," and paid therefor $1,605.

(a) For that the master reports that Fish's petition of Dec. 2, 1796, sets up a claim to the lands as owned and possessed by his father by grant at the time of the old Spaniards.

Eighth exception: For that the master reports that the date 1796 is unquestionably an error, against the contention of the defendants

179 that said postdating was strong evidence that the documents were spurious and had been placed among the archives at or since the change of flags.

Ninth exception: For that the master, in reporting the findings of Ortega, dated Dec. 15, 1794, fails to report that said Ortega reported that Fish bought nothing but said orange grove.

Tenth exception: For that the master reports that Licentiate Ortega reported to Governor Quesada, of date Dec. 15th, 1794, that "the island" might be granted to Fish as a new settler.

Eleventh exception: For that the master reports that on Dec. 15th, 1794, Quesada ordered proof of Fish's claim to be made, whereas the proof to be taken was of what lands his father possessed to give him a right of preference in case a grant be made him as a new settler.

Twelfth exception: For that the master reports that the collector, on Feb. 27th, 1795, reports t[illegible] "the proofs show that Fish is entitled to the grant of 10,000 acres."

Thirteenth exception: For that the master fails to report that by the order of March 26th, 1795, pp. 47–8 of record, the petition of Fish to

declared the owner of 10,000 acres of land as annexed to the Bergal antation was refused by Quesada.

Fourteenth exception: For that the master failed to report that all roceedings offered after the order of Quesada, dated March 26th, 1795, e spurious, and at most invalid to establish a title to the lands.

Fifteenth exception: For that the master reports that a grant was ade to Fish by Morales as political and military governor of East Florida.

80 Sixteenth exception: For that the master reports that the lands described in the alleged grant by Morales, to wit, "the lands which appears his father possessed and have already been laid off with the eserve of the quarries, and the remainder, which was not granted to his ther, and which the King had always reserved," embrace the island of nastasia, except the lands east of a line surveyed by Hopkins.

(a) For that the master in his report of the delivery of possession uses he singular, "quarry and reservation," while the record evidence speaks f quarries and reservations.

Seventeenth exception: For that the master, after having used the term the island" all the way through his report of the testimony, pages 51–60, ails to note and advise the court that although Anastasia Island is roved to have been well known by that name at a date much earlier han these alleged proceedings, that no mention is made in these whole roceedings of Anastasia Island until the alleged report of delivery of ossession, and then only in the expression "being at the plantation alled the orange grove in the island of St. Anastasia."

Eighteenth exception: For that the master reports that Governor Quesada became ill, so as to be unable to discharge the duties of his ffice at the date when the copy was given Fish (March 26th, 1795).

Nineteenth exception: For that the master reports that it is beyond uestion that Morales was, during the latter part of these proceedings nd at the time the alleged grant was made, acting political and military overnor of the provence, invested with all the powers and duties of such office and was governor de facto and de jure.

81 Twentieth exception: For that the master reports that the governors of East Florida were vested with unlimited power and uthority to make grants of land unrestricted as to quantity or terms.

Twenty-first exception: For that the master reports that by the law revailing in the province of East Florida, the power to grant lands was onferred, not upon the governor, but upon the office itself.

Twenty-second exception: For that the master held as a matter of law hat it was necessary for defendants to show that Morales did not hold he office of governor, and failed to hold that the burden of proof was n complainants to prove that he did hold such office by competent evidence outside of the alleged proceedings.

Twenty-third exception: For that the master has reported that Morales was not only governor, but subdelegate of the King.

(a) For that the master has reported that there is no set form for absolute grants of land under the Spanish laws and costoms in force in East Florida.

Twenty-fourth exception: For that the master has reported that there vas granted to Fish in absolute property the island of Anastasia, except

the reservation of the King's Quarries, and such lands as had not been granted to Fish's father, but had been reserved to the King.

(a) For that the master has reported it was evidently the intention, and the governor did grant to Fish the same lands which he had proved had been granted and possessed by his father.

Twenty-fifth exception: For that the master held that Fish had proved that any lands had been granted his father.

182 Twenty-sixth exception: For that the master reports that the lands claimed by complainants had been made in assuming that any grant had been made to Fish's father.

Twenty-seventh exception: For that the master has assumed, without any evidence in the record to support it, that "there was an investure of title to Fish," and upon such an assumption has drawn from the alleged marking of bound'ries the conclusion that there was a segregation of certain definite lands from the public domain.

Twenty-eighth exception: For that the master has failed to report that whatever credit he may give to the alleged report of deliver' of possession, that there is no evidence or clue in the record that can at this day designate the bounds of the lands reserved.

Twenty-ninth exception: For that the master has reported that this grant was perfect in itself, showed clearly the intention to grant the lands absolutely, and directed the delivery of possession as Fish's absolute property.

Thirtieth exception: For that the master has utterly ignored the mass of evidence showing that the paper produced as the grant by Morales, if genuine, was but a first concession, and at most a right of possession was granted.

Thirty-first exception: For that the master, after reporting that "the land granted was an island well known and defined by name," has failed to note that throughout the *the* whole proceeding of Fish from beginning to end, neither Fish nor any official of the government refers to the lands in question as Anastasia Island.

183 Thirty-second exception: For that the master reports that from the alleged grant there was only reserved a small portion of the island which had been previously laid off and separated from the rest of the island previous to the grant.

Thirty-third exception: For that the master, in reporting the testimony, first reports "that Fish prays for the grant of the island of the orange grove," and assumes that this refers to Anastasia Island, and then reports "that Fish prays for the place of the orange grove with the lands annexed, amounting to 10,000 acres."

Thirty-fourth exception: For that the master reports that defendant's contention that the grant is indefinite and cannot be definitely located, is not sustained by the evidence.

Thirty-fifth exception: For that the master has reported that the bounds of the reservations made in the alleged grant of 1795 were established by the testimony of the witnesses Sanchez, Hopkins, Harrington, and master's.

Thirty-sixth exception: For that the master has reported that it was in the power of the governor to grant the island of Anastasia to Jesse Fish, an alien.

Thirty-seventh exception: For that the master has reported that at the death of Jesse Fish Sarah Fish, an alien, inherited the lands in controversy.

Thirty-eighth exception: For that the master reported that it is uncertain whether the works at Matanzas were on Anastasia Island or the mainland, and if on the island it was part of the lands marked off as reserved at the alleged delivery of possession.

184 Thirty-ninth exception: For that the master has reported that lands could be bought and were sold for money by the Spanish governor's of East Florida.

Fortieth exception: For the master has failed to consider and report that Fish applied for the lands in controversy as a new settler, and that to him as a new settler the alleged grant purports to have been made, and that the evidence shows him to be a new settler in 1791.

Forty-first exception: For that the master has failed to consider the evidence that by the laws of the province in force in 1795 the grants carried with them a condition of residence and cultivation, of which proof must have been made before the complete title issued.

Forty-second exception: For that the master has reported that the proceedings bear on their face the stamp of genuineness, and has failed to consider the evidence upon the face of the alleged proof offered by Fish, proving it to be spurious, as postdating, antedating, impossible and improbable age of witnesses, and claim that 10,000 acres was annexed to an orange grove of 840 trees.

Forty-third exception: For that the master has characterized as a mere assumption the mass of evidence in the record that in the Spanish archives inchoate titles were in loose papers, while complete titles are in bound books, and has made no distinction between the "first papers and the royal title."

Forty-fourth exception: For that the master has ignored the positive evidence that the official proceedings offered of the alleged grant

185 to Fish was paper No. 17 of a hundred loose documents labeled in the office of the keeper of the public archives "Memorials and concessions of land," and the uncontested proof that among the real or complete titles made by Spain in East Florida this grant is not found.

Forty-fifth exception: For that the master has without proof assumed that Fish's possession from 1795 to 1824 was of anything more than the Bergal plantation on Fish's homestead on Fish's Island.

Forty-sixth exception: For that the master fails to find and report that whatever reservation out of the island of Anastasia was made in A. D. 1795 was undefined at the date of the cession and never defined or made known to the United States.

Forty-seventh exception: For that the master hath failed to report the evidence in the record that two grants were made by the Spanish governor of lands within the bounds that he finds were delivered to Fish, one of which was years after perfected by a royal title.

Forty-eighth exception: For that the master reports that complainants and their predecessors in title have been since 1795 in actual possession and occupation of that part of "said island known as the place of the orange grove," containing about 100 acres.

Forty-ninth exception: For that the master, after finding as a matter of law and fact that "two small Spanish grants are located on the

property," failed to find and report that such grants were conclusive proof that the grant to Fish was at best a mere concession.

Fiftieth exception: For that the master has, under the rule that possession follows title, failed to consider the evidence that the
186 boundaries of what was claimed to be granted and what reserved are and have been undefined.

Fifty-first exception: For that the master has found and reports that Sarah Fish died intestate and that title by descent in her property passed to Charles M. Furman.

Fifty-second exception: For that the master refused to admit in evidence and consider the minutes of the probate court as proved.

Fifty-third exception: For that the master reports that the title to the lands in controversy was complete and stood confirmed to Fish by the 8th article of the treaty with Spain, while in the next paragraph but one the master reports that "such titles are exempt from the 8th article."

Fifty-fourth exception: For that the master reports that the act of May 23rd, A. D. 1828, is confined to inchoate or imperfect claims, in opposition to the plain language of the Supreme Court.

Fifty-fifth exception: For that the master has failed to report that if the act of 1828 did not apply to complete grants it would have been the duty of the court to dismiss all cases where a complete grant was presented, both the court below and the Supreme Court.

Fifty-sixth exception: For that the master finds and reports that in California the courts are bound to follow the plain words of the statute, but in Florida the terms of a treaty are not controlled by the words of a latter act of Congress.

Fifty-seventh exception: For that the master reports that the citation from Fremont vs. U. S. is applicable to the Florida cases, while
187 the citation applied to the act of 1824, which merely gave the rule of decision as to Florida cases, but did give jurisdiction as to the Louisiana cases.

Fifty-eighth exception: For that the master has reported that the United States was estopped to deny the validity of the Fish claim.

Fifty-ninth exception: For that the master has reported that the act of 1828 operated to confirm to the full extent of the area granted by Spain instead of being limited by its terms.

Sixtieth exception: For that the master has reported that the only questions of law were determined by the decision of the land department rejecting the claim of Fish to the lands in controversy.

Sixty-first exception: For that the master has reported that the United States acquired no title to the lands in controversy and has ignored the fact that complainants admit that a part of the lands were in a reservation of uncertain bounds.

Sixty-second exception: For that the master has reported that this suit is not in effect a suit against the State of Florida.

Sixty-*second* exception: For that the master has reported that complainants can in their own names attack the patent from the United States and maintain this suit, and has failed to report that such suit can only be maintained in the name of the United States.

Sixty-fourth exception: For that the master has failed to apply the rule that the onus is upon the one asserting the invalidity of a patent to prove the want of title in the United States.

Sixty-fifth exception: For that the master has failed to find and
188 report that by the act of May 23rd, 1828, Congress required those having complete title to place the evidence of it upon the record, so that it might be known whether or not they had complete or incomplete or no title, and if a complete title its location.

Wherefore the said defendants do except to said general report of said master and appeal therefrom to the judgment of this Court.

W. W. DEWHURST,
Solicitor for Defendants Mitchell et al., Trustees, etc., and H. S. Cummings.
PARROTT & HAMLIN,
Solicitors for Fla. Coast Line Canal & Trans. Co. & St. Johns Ry. Co.

(Endorsed:) Exceptions to the opinion and report of the spl. master. Filed Oct. 18/97. E. O. Locke, clerk.

189 Circuit court of the United States, southern district of Florida.
In chancery.

CHARLES M. FURMAN ET AL.)
vs.)
H. L. MITCHELL ET AL.)

Application for security for costs.

To the honorable judges of said court in chancery sitting:

Your petitioners, the trustees of the internal improvement fund of the State of Florida, by W. W. Dewhurst, their solicitor, respectfully represent that they have been decreed to pay one-half the bill of costs of the master appointed herein, amounting to the sum of $368.56; that they are ready and willing to comply with the said decree provided proper security is given by the complainants herein; that they will pay all costs awarded these defendants by the decree of this court upon the bill; that said complainants are all non-residents, so that they are without the jurisdiction of this court to enforce any decree for costs; and these petitioners submit that, before compliance with the decree made herein that these petitioners pay costs of the master, the complainants should give bond for costs or should deposit in the registry of this court a sum equal to the amount decreed to be paid by these defendants, subject to the final decree of this court upon the bill.

Your petitioner therefore petitions that an order be made herein that complainants do forthwith give security for costs; and that until such security is given the decree made herein for payment by defendants of the master's costs be suspended.

W. W. DEWHURST,
Solicitor for Petitioners.

(Endorsed:) Motion for security for costs. Filed March 21, 1898. E. O. Locke, clerk, by Louis Starke, deputy clerk.

190 It appearing, by statement of counsel, that the costs have been paid herein and said requiring said order can be of no practical effect, it is ordered said motion be denied.

March 29th.

JAMES W. LOCKE, *Judge.*

191 In the circuit court of the United States, southern district of Florida. In chancery.

CHARLES M. FURMAN, ALESTER G. FURMAN, AND Bolivar B. Furman,

vs.

HENRY L. MITCHELL, GOVERNOR; WILLIAM D. Bloxam, comptroller; C. B. Collins, treasurer; William B. Lamar, attorney-general, and L. B. Wombwell, commissioner of agriculture of the State of Florida, as the board of trustees of the internal improvement fund of the State of Florida, the Florida Coast Line, Canal and Transportation Company, The St. Johns Railway Company, Horace S. Cummings, and John A. Henderson.

This cause coming on for a final hearing upon the bill of complaint and answers thereto, report of the special master appointed in this cause and the testimony taken by him and submitted with his report, and the exceptions of the defendants to the said master's report; and having been argued by counsel for the respective parties, and the court having duly considered the same and being fully advised in the premises:

It is ordered, adjudged, and decreed that the said exceptions to the said master's report be, and the same are hereby, overruled, and the said report is in all things confirmed. And it is further ordered, adjudged, and decreed that the following patents, to wit, the said patent from the United States to the State of Florida bearing date the 18th day of September, A. D. 1856, of those certain lands on Anastasia Island, in the county of St. Johns and State of Florida, described by the public
192 surveys as lots one, two, three, and four of section seventeen; lots one and two of section twenty; lots three and eight of section twenty-one; the northwest quarter and the east half of southwest quarter of section twenty-eight, and lots one, two, three, and six of section twenty-nine; lots two, three, and five of section thirty-two, and the west half of the northeast quarter of the southeast quarter of section thirty-three; all in township seven south, of range thirty east, containing one thousand four hundred and sixty-five and fifteen one-hundredths acres (1,465.15), more or less. The said patent from the United States to the State of Florida, bearing date the 27th day of June, A. D. 1895, for these certain lands in Anastasia Island in St. Johns County, State of Florida, described by public surveys as the northwest quarter of southeast quarter, the south half of southeast quarter, and the west half of the southwest quarter of section twenty-eight, and lots three, four, seven, and eight of section thirty-four; all in township seven south, range thirty east, containing three hundred and ninety-three and thirty one-hundredths (393.30) acres, and the said patent from the United States to the State of Florida bearing date the 8th day of April, A. D. 1895, of those certain lands on Anastasia Island, in the county of St. Johns and State of Florida, described by the public surveys as the northwest quarter of the northeast quarter of the southwest quarter of the northeast quarter, and the SE. ¼ of NE. ¼ of section twenty-eight, all in township seven south,

range thirty east, containing in the aggregate one hundred and twenty (120) acres, be, and each of them, except in so far as the last-mentioned patent applies to the northwest quarter of the northeast quarter and the southeast quarter of the northeast quarter of section twenty-eight, township seven south, of range thirty east, is hereby set aside and declared null and void as against the complainants and all persons claiming under them or any of them as a cloud upon their title.

And the following deeds of conveyance, to wit, the said deed from the board of trustees of the internal improvement fund of the State of Florida to the Coast Line Canal and Transportation Company, bearing
193 date the 13th day of May, A. D. 1886, of those certain lands on Anastasia Island, in the county of St. Johns and State of Florida, described by the public surveys as lots one and two of section twenty; the northwest quarter and the east half of southwest quarter of section twenty-eight, and lot five of section thirty-two, of township seven south, range thirty east, containing, in all, five hundred and thirty-nine and forty-nine one-hundredths (539.49) acres; the said deed from the board of trustees of the internal improvement fund of the State of Florida to the St. Johns Railway Company, bearing date the 21st day of September, A. D. 1886, of those certain lands on Anastasia Island, in the county of St. Johns and State of Florida, described by the public surveys as lots three and eight of section twenty-one, lot one of section twenty-nine, the west half of the northeast quarter and the northeast quarter of the southeast quarter of section thirty-three, of township seven south, of range thirty east, containing, in all, three hundred and twenty-eight and ten one-hundredths (328.10) acres, the said deed of conveyance from the board of trustees of the internal improvement fund of the State of Florida to the defendant John A. Henderson, bearing date the 30th day of July, A. D. 1892, of those certain lands on Anastasia Island, in the county of St. Johns and State of Florida, described by the public surveys as lots one, two, three, and four of section seventeen, township seven south, range thirty east, containing two hundred and eighty-six and twenty-eight one-hundredths (286.28) acres, and the said deed of conveyance from the Florida Coast Line Canal and Transportation Company to the defendant Horace S. Cummings, bearing date the 22nd day of June, A. D. 1888, of those certain lands on Anastasia Island, in the county of St. Johns and State of Florida, described by public surveys as the east half of the southwest quarter and the east half of the northwest quarter of section twenty-eight, of township seven south, of range thirty east, containing one hundred and sixty (160) acres, be, and each of them is hereby, set aside and declared null and void against the complainants, and all persons
194 claiming under them or any of them, as a cloud upon their title.

And that the said selections and entries of the State of Florida of those certain lands on Anastasia Island, in the county of St. Johns and State of Florida, described by the public surveys as lots two and seven of section twenty-one, lots one and four of section thirty-two, and lots two, five, and six of section thirty-four, all in township seven south, of range thirty east, containing three hundred and sixty-seven and thirty-two one-hundredths acres, be, and the same are hereby, set aside and declared to be null and void as against the said complainants, and all persons claiming by or under them or either of them, as a cloud upon their title;

and the defendants and their successors in office, and each and every of them, and all persons claiming under them since the commencement of this suit, are hereby enjoined from entering upon or taking possession of the said lands, the patents and deeds to which are herein set aside, or any portion thereof, or in any manner disturbing the complainants' possession thereof; and it is further ordered and decreed that the defendants and complainants each pay the costs of this suit incurred by them.

Done in open court this sixth day of April, 1898.

JAMES W. LOCKE, *Judge.*

(Endorsed:) Final decree. Filed April 6, 1898. E. O. Locke, clerk.

195 Circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN ET AL., COMPLAINANTS,
vs.
HENRY L. MITCHELL, GOVERNOR, ET AL., defendants.

The defendant John A. Henderson, against whom a decree pro confesso in the above-entitled cause has been entered, comes now and appears in said cause and refuses to join in the appeal to the Supreme Court of the United States from the decree made in said cause in the above-entitled court.

Tallahassee, June 15, 1898.

JOHN A. HENDERSON.

(Endorsed:) Refusal to join appeal by John A. Henderson. Filed July 6, 1898. E. O. Locke, clerk, by Louis Starke, deputy clerk.

196 S. G.—W. J. H. G. M. R.
4637—1888.
In correspondence on this subject quote the above initials and file number.

DEPARTMENT OF JUSTICE,
Washington, D. C., June 30, 1898.

WM. WHITWELL DEWHURST, esq.,
Solicitor, etc., Municipal Building, St. Augustine, Fla.

SIR: Referring to former correspondence upon the subject, in view of the interest of the United States in the controversy, I write to request that you will at once take an appeal from the decree of the circuit court of the United States for the southern district of Florida in the case of Chas. M. Furman et al. vs. H. L. Mitchell et al.

Respectfully, JOHN W. GRIGGS,
Attorney-General.

(Endorsed:) Directions by the Hon. Attorney-General of the United States to take an appeal. Filed in July 6th, 1898. E O. Locke, by Louis Starke, dep. clerk.

197 Circuit court of the United States for the southern district of Florida.

CHARLES M. FURMAN, BOLIVAR B. FURMAN AND Alester G. Furman, complainants,
vs.
HENRY L. MITCHELL, GOVERNOR OF THE STATE OF Florida; William D. Bloxam, comptroller of the State of Florida; Charles B. Collins, treasurer of the State of Florida; William B. Lamar, attorney-general of the State of Florida; Lucius B. Wombwell, commissioner of agriculture of the State of Florida, as the board of trustees of the internal improvement fund of the State of Florida; the Florida Coast Line Canal and Transportation Company, a corporation; the St. Johns Railway Co., a corporation; Horace S. Cummings, and John A. Henderson, defendants.

The above-named defendants, excepting only John A. Henderson, who has this day filed in this court his refusal to join in an appeal, conceiving themselves aggrieved by the several orders made and the final decree rendered in the above-entitled cause on the sixth day of April, A. D. 1898, do now in open court, at the same term thereof at which the said decree was rendered, hereby appeal from the said several orders and the said final decree made in said cause to the Supreme Court of the United States, and they pray that their appeal may be allowed, and that a transcript of the record and proceedings and papers in said cause, duly authenticated, may be sent to the Supreme Court of the United States.

W. W. DEWHURST,
Solicitor for Defendants, Mitchell et al., as the Board of Trustees of the Internal Improvement Fund, etc., and Horace Cummings.

198 PARROTT & HAMLIN,
Solicitors for the St. Johns Railway Company and the Florida Coast Line Canal and Transportation Company.

And now, on the 6th day of July, A. D. 1898, in open court, at the term at which the decree appealed from was rendered, it is ordered that the appeal above prayed for be allowed, and the written direction of the honorable Attorney-General of the United States for said appeal having been filed herein, it is ordered that said appeal be without bond; it appearing from the files that the defendant, John A. Henderson, has appeared in this court and filed his refusal to join in said appeal, it is further ordered that the defendants in said cause, other than said John A. Henderson, be granted a severance.

Jacksonville, Fla., July 6th, 1898.

JAMES W. LOCKE, *Judge.*

(Endorsed:) Entry and allowance of appeal. Order allowing appeal. Filed July 6, 1898. E. O. Locke, clerk, by Louis Starke, dep. clerk. Entered in Ct. Ct. minutes, pp. 359.

199 Circuit court of the United States, southern district of Florida.

WEDNESDAY, *July 6th, 1898.*

Present: Hon. James W. Locke, district judge.

CHAS. M. FURMAN ET AL.)
vs.
H. L. MITCHELL ET AL.)

Now, on this day comes the defendants in said cause, and the said defendants, Henry L. Mitchell et al., as the trustees of the railroad improvement fund of the State of Florida, and Horace Cummings, by W. W. Dewhurst, their solicitor, and the St. Johns Railway Company and the Florida Coast Line Canal and Transportation Company, by Parrott & Hamlin, their solicitors, in open court apply for and enter their appeal to the Supreme Court of the United States from the order and decree made in said cause and at the same time file in this court the written direction of the Hon. Attorney-General of the United States to take said appeal, and thereupon the court made its order allowing said appeal without bond, and at the same the defendant John A. Henderson, having appeared in this court and filed his refusal to join in said appeal, the court ordered a severance in said cause to the defendants other than John A. Henderson.

And the following order is entered, viz:

And now on this the 6th day of July, A. D. 1898, in open court, at the term at which the decree appealed from was rendered, it is ordered that the appeal above prayed for be allowed, and the written direction of the Honorable Attorney-General of the United States for said appeal having been filed herein, it is ordered that said appeal be without
200 bond. It appearing from the files that the defendant John A. Henderson has appeared in this court and filed his refusal to join in said appeal it is further ordered that the defendant in said cause, other than said John A. Henderson, be granted a severance.

Jacksonville, Florida, July 6th, 1898.

JAMES W. LOCKE, *Judge.*

From Minute Book D, circuit court, page 358 and 359.

201 In the circuit court of the United States, southern district of Florida.

CHARLES M. FURMAN, BOLIVAR B. FURMAN, AND Alester G. Furman, complainants,
vs.
HENRY L. MITCHELL, GOVERNOR OF THE STATE of Florida; William D. Bloxham, comptroller of the State of Florida; Charles B. Collins, treasurer of the State of Florida; William B. Lamar, attorney-general of the State of Florida; Lucius B. Wombwell, commissioner of agriculture of the State of Florida, as the board of trustees of the internal improvement fund of the State of Florida; The Florida Coast Line Canal and Transportation Company, a corporation; The St. Johns Railway Company, a corporation; Horace S. Cummings, and John A. Henderson, defendants.

It is hereby ordered that the order of appeal entered herein on the 6th day of July, A. D. 1898, be, and the same is so far modified as to permit said appeal to be taken by appellants upon the filing of a bond in due form of law in the sum of five hundred dollars.

And said bond being hereby and now presented in said sum, and the same being hereby approved, it is further ordered that said appeal be allowed as hereinbefore ordered.

Done and ordered in Jacksonville, Florida, this 20th day of July, A. D. 1898, at the term at which the decree appealed from was rendered, and in open court.

JAMES W. LOCKE, *Judge, etc.*

(Endorsed:) Modification of order of appeal. Filed this 20th day of July, 1898. E. O. Locke, clerk, by Louis Starke, D. C.

202 In the Supreme Court of the United States.

HENRY L. MITCHEL ET AL., AS TRUSTEES of the Internal Improvement Fund of the State of Florida et al., defendants in the court below, appellants,
vs.
CHARLES M. FURMAN ET AL., COMPLAINANTS in the court below, appellees.

Assignment of errors.

Of Henry L. Mitchell, governor of the State of Florida, et al., as the board of trustees of the Internal Improvement Fund of the State of Florida, Horace S. Cummings, the Florida Coast Line Canal and Transportation Company, and the St. Johns Railway Company, appellants.

Henry L. Mitchell, governor of the State of Florida, William D. Bloxam, comptroller of the State of Florida, Charles B. Collins, treasurer

of the State of Florida, William B. Lamar, attorney-general of the State of Florida, and Lucius B. Wombwell, commissioner of agriculture of the State of Florida, as the board of trustees of the Internal Improvement Fund of the State of Florida; Horace S. Cummings, the St. Johns Railway Company, and the Florida Coast Line Canal and Transportation Company, appellants, by William W. Dewhurst and Parrott and Hamiln, their solicitors, having appealed from the proceedings and decree of the circuit court of the United States for the southern district of Florida in the cause above stated, do assign for error as follows:

First. The court erred in denying the motion of defendants to dismiss the said suit, for want of jurisdiction, and in taking jurisdicti'
203 of said cause.

Second. The court erred in overruling the demurrers of the defendants and requiring answers.

Third. The court erred in referring the whole cause, both questions of law and fact, to the master without the consent of the parties.

Fourth. The court erred in confirming the report of the master in this, that the master in his report of the testimony filed and made a part of his report admitted evidence over the defendants' objection and refused to admit evidence offered by defendants as follows:

(a) The master admitted over objection the testimony of Mr. Sanchez in Exhibit G, page of the record, in answer to the question, "State the location of what is known as the quarries, or Kings quarries, on Anastasia Island."

(b) The master admitted over objection the petition of Sarah Fish presented to the board of land commissioners, and copies of documents reported by that board to have been presented before them, and their report on said petition, taken from volume four, American State Papers, pages 465–471 (Duff Green's edition).

(c) The master admitted over objection Exhibit E, deed from Julia R. Furmen, and Exhibit F, deed from Irvine K. Furman.

(d) The master admitted over objection Exhibit U the certified copies of the original papers purporting to be a concession to Jessie Fish of lands on Anastasia Island, from the surveyor-general's office.

(f) The master ruled out on objection the testimony of the witness Rogero as to the location of the quarries, page of record.

(g) The master ruled out the testimony of the witness Dunham county clerk as to the handwriting in the county court docket, and this witness' testimony tending to prove the docket to be a record of the county court, pages of the record.

(h) The master sustained objections to the lists offered in evidence of the Spanish governors, the periods of their incumbency, and the evidence that Quesada was appointed by the King.

204 (i) The master sustained objections to the admission in evidence of the law of Spain prohibiting the granting of islands to foreigners, page of the record.

(j) The master sustained objections to the testimony of the witness Colee, as follows: "The people have quarried stone ever since I was a boy; the public cut stone on any part of the island," pages of the record.

(k) The master sustained objections to the testimony of the witness Colee that Rodriguez grant on Anastasia Island was occupied and built upon as a town settlement, page of record.

(l) The master sustained objections to the extracts from the published reports of the register and receiver, acting as a board of commissioners, pages of record.

(m) The master sustained objections to the records from the General Land Office, and on appeal before the Secretary of the Interior in the case of Charles M. Furman, involving the claim of title to Anastasia Island, defendants' Exhibit No. 12, and certified copies of the records from the General Land Office of correspondence and proceedings relating to the title of lands on said island, defendants' Exhibits Nos. 7 to 11, inclusive, pages of the record.

(n) The master sustained objections to the evidence offered that Sarah Fish died testate, and that her will was probated in St. Johns County, Florida, pages of record.

(o) The master sustained objections to the testimony offered by defendants that the lists of grants in East Florida, as published in the American State Papers, show no other grant by Morales, and but two grants made by any other authority then the governor in person, pages of the record.

The master sustained the objections to the evidence offered by the defendants that in the many sales by the Spanish Government of the property of Fish, sr., made at the time of the sale of the "Orange
205 Grove," the purchasers, except Jessie Fish, jr., took a deed to the several parcels of land so purchased in absolute title, executed by the governor, in the form set forth in Exhibit No. 31, pages of record.

(q) The master sustained objections to the evidence offered by the defendants that the originals of the title papers of Jesse Fish for lands on Anastasia Island, as they exist in the surveyor-general's office, is No. 17 of a bundle of one hundred loose unbound papers marked "Memorials and concessions of land," and that the same are mutilated and bear on their face marks casting doubt on their authenticity. Pages of record.

(r) The master sustained objections to the deed from the Spanish Government to Bartolome Sintas of lands bought at the judicial sale of property of Fish, sr., offered as evidence both of the form of a royal title and of a title in absolute property made to purchasers at said sale. Defendants' Exhibit No. 31, pages of record.

(s) The master sustained objections to the evidence from volume 5, American State Papers, pages 750 and 751 (Gales and Seaton's edition), of the direction of Governor Coppinger and Saavedra to furnish the agent of the Duke of Alagon the conditions under which the Spanish Government at different epochs granted land, and to furnish him an attested copy of each of the titles of proprietorship issued in each class, with the report made by the Spanish officials in compliance with such directions. Pages of record.

Fifth. The court erred in sustaining the findings of law and fact of the master over the exceptions thereto of the defendants Mitchell et al., the Trustees, etc., numbered from one to forty-two, inclusive, and printed on pages of the record.

Sixth. The court erred in confirming the opinion and the report of the master over the exceptions thereto of the defendants Mitchell et al., the Trustees, etc., numbered from one to sixty-five, inclusive, printed on pages of the record.

206 Seventh. The court erred in making the decree dated the 6th day of April, A. D. 1898, and in decreeing the relief prayed in the bill or any relief.

Eighth. The court erred in decreeing any relief against the State of Florida, the real defendant sued through the trustees of the Internal Improvement Fund.

Ninth. The court erred in refusing to dismiss the bill at the hearing for the following reasons:

(1) Because by a correct construction of the treaty with Spain and the acts of Congress for the settlement of land claims in Florida the statutes made by the United States barred the claim of complainants.

(2) Because the claim presented, if genuine, was made without authority.

(3) Because the grant, if genuine, was an inchoate title.

(4) Because the concession presented was an undefined and unsegregated quantity of land and the exception not established.

(5) Because no sufficient possession was proved.

(6) Because complainants proved title out of themselves.

(7) Because the evidence showed the claim had been determined adversely to the complainants in a tribunal having jurisdiction of the subject-matter and parties at the request of complainants.

Tenth. The court erred in refusing to dismiss the bill at the hearing at the request of defendants.

WILLIAM W. DEWHURST,
PARROTT & HAMLIN,
Solicitors for Appellants.

(Endorsed:) Assignment of errors. Filed July 6th, 1898. E. O. Locke, clerk, by Louis Starke, deputy.

207 Circuit court of the United States for the southern district of Florida. In chancery.

CHARLES M. FURMAN AS ADMINISTRATOR OF THE estate of Charles M. Furman, Charles M. Furman, Bolivar B. Furman, and Alestor G. Furman, complainants and appellees,

vs.

HENRY L. MITCHELL, GOVERNOR OF THE STATE of Florida, William D. Bloxham, comptroller of the State of Florida, William B. Lamar, attorney-general of the State of Florida, and Lucius B. Wombwell, commissioner of agriculture of the State of Florida, as the board of trustees of the Internal Improvement Fund of the State of Florida; The Florida Coast Line Canal and Transportation Company, a corporation; The St. Johns Railway Company, a corporation; Horace S. Cummings and John A. Henderson, defendants and appellees.

Know all men by these presents that we, St. Johns Railway Company, John T. Dismukes, and J. E. Ingraham are held and firmly bound unto the above-named Charles M. Furman, as administrator of the estate of

Charles M. Furman, and Charles M. Furman, Bolivar B. Furman, and Alester G. Furman, in the sum of five hundred dollars, to be paid to the said Charles M. Furman as administrator of the estate of Charles M. Furman, Charles M. Furman, Bolivar B. Furman, and Alester G. Furman, for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, administrators, and successors, jointly and firmly by these presents.

Sealed with our seals and dated this 8th day of July, A. D. 1898.

Whereas the above-named defendants and appellants have prosecuted an appeal to the Supreme Court of the United States to reverse
208 the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of Florida;

Now, therefore, the condition of this obligation is such that if the above-named defendants in said suit, the appellants, shall prosecute said appeal with effect, and pay and satisfy all such costs as shall be assessed against them in case the said decree shall be affirmed, then this obligation to be void, else to remain in full force and virtue.

JNO. T. DISMUKES, [SEAL.]
J. E. INGRAHAM, [SEAL.]
ST. JOHNS RAILWAY COMPANY,
By J. R. PARROTT, [CORPORATE SEAL.]
Vice President.

Approved by James W. Locke, district judge and judge of the circuit court of the United States for the southern district of Florida.

(Endorsed:) Circuit court of the United States court, southern district of Florida. Charles M. Furman vs. H. L. Mitchell et al. Appeal bonds. Filed this 20th day of July, 1898. E. O. Locke, clerk, by Louis Starke, deputy clerk.

209 CHAS. M. FURMAN ET AL.)
vs.
H. L. MITCHELL ET AL.)

Ordered, that the time for completing and filing the transcript of record herein in the Supreme Court of the United States be enlarged until Sept. 30th, 1898, on account of unavoidable delay in transcribing.

JAMES W. LOCKE, *Judge.*

We hereby agree to the foregoing order.

FLEMING & FLEMING,
Attys. for Complainants.

210 In the circuit court of the United States, 5th circuit, southern district of Florida.

CHARLES M. FURMAN ET AL.)
vs.
H. L. MITCHELL ET AL.)

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219 In the circuit court of the United States, southern district of Florida.

C. M. FURMAN ET AL.,)
vs.
H. L. MITCHELL, &C., ET AL.)

JACKSONVILLE, FLORIDA, *Nov. 24th, '96*—10 a. m.

And now on this day, pursuant to an order heretofore made in this case bearing date the 27th day of July, 1896, the above cause comes on to be heard before me, H. H. Buckman, esq., as master, upon notice heretofore given, which is attached to this report and made part thereof.

Present: Messrs. Fleming & Fleming and Bisbee & Rinehart, solicitors for complainants; W. W. Dewhurst, esq., solicitors for the Internal Improvement Fund, and Cumming.

Counsel for defendants objects to the introduction or the taking of any testimony in the cause upon the grounds that are set forth in the motion to dismiss and in the demurrer filed by Mitchell et al., trustees in the cause; and upon the further ground that by the express provisions of section 12 of the act of May 23, 1828, and section 4 of the act of
(1) May 26, 1830, that any court whatever is prohibited from taking jurisdiction in the cause. Objection overruled, as such questions are passed upon as far as the master is concerned by the order of reference. Exception noted.

220 Complainants offer in evidence so much of Vol. IV of the American State Papers, Duff Green's edition, which shows the proceedings before the commissioners for the investigation of land titles in East Florida, the papers and evidence of title in reference to the claim of Sarah Warner Fish, filed before them, and their report to the Secretary of the Treasury, and the submission of the same by the Secretary of the Treasury to Congress, so found on pages 256, 268, 275, 276, 283, 288, 289, 300, 301, 400, 465, 466, 467, 468, 469, 470 & 471, and the title-page.

Counsel for defendants objects to the introduction of same in evidence on the ground that these proceedings published in the American State Papers and copies of certain papers that were presented to the commissioners are not evidence; that all that is evidence is the report of the commissioners that itself is evidence; that the copy of the American State Papers of the proceedings before the commissioners is not the best evidence; that there is no evidence of the execution of any of the papers purporting to be copied in that record; that there is no proof of the genuineness of any of the documents copied in that record and
(2) presented; that there is no proof that any of the documents in that record were executed by the lawful authority of the King of Spain.

By the MASTER. I hold that for the purpose of this hearing, unless I am further advised in the progress of this case, that the record as produced here—Duff Green's edition—is competent, and the document may be admitted subject to such further objections as to the papers themselves as counsel may have.

To which ruling of the master the counsel for defendants excepts.

Counsel for defendants now enters objections to the testimony offered, as follows: That it appears from the papers offered that it is a concession upon condition, and the condition is not shown to have been per-
221 formed; that it is a concession not made by the lawful authority of the King of Spain; that it is an incipient title never recognized or confirmed by the United States, without seal or witnesses; that a court of equity under its general jurisdiction has no jurisdiction to consider such evidence or such a title, and that the courts are absolutely prohibited by statute from considering such a title; that it appears that the concession is not in conformity to the customs and practice of Spain, both as to the formal execution, the location, and the quantity of land it purports to convey; that the concession does not sufficiently describe the lands in controversy, and the description is too vague and uncer-
(3) tain to locate the lands; that the concession is void as to the conveyance of land because it was not surveyed and segregated as private property before the general concession by the King of Spain of all the Floridas and not a grant made before the 24th of January, 1818; because the bill sets out a title by descent and, being an incipient title, it was not descendible under the Spanish laws; because it appears on the face of the concession to be fraudulent, and further that it appears on the face of the proceedings that the claim of Jesse Fish for ten thousand acres of land was rejected by the lawful authorities of the Spanish Government.

The master reserved his ruling upon these objections for the present, but, being further advised, overrules such objections and admits the same. Exceptions to ruling on here noted.

Complainants' counsel offers in evidence the testimony of Ann E. Furman, which was taken de bene esse; which is received and filed in evidence and marked "B."

Complainants offer an exemplified copy of the will and the probate thereof of Charles M. Furman, deceased; which is received and filed in evidence, marked "C."

222 Complainants offer an exemplified transcript of the letters of
(4) administration, with the will annexed, to Charles M. Furman; which is received and filed in evidence, marked "D."

CHARLES M. FURMAN, a witness produced and sworn on the part of the complainants, testifies as follows:

Examined by Mr. FLEMING:

Q. What is your name?

A. My name is Charles M. Furman. I reside at Clemson College, South Carolina. My age is fifty-six.

Q. You have seen the letters of administration with the will annexed of Charles M. Furman, deceased. State whether or not you are the Charles M. Furman to whom the letters were issued.

A. I am the man to whom they were issued, and the estate is still in process of settlement. I am still acting as administrator of the estate. The letters are dated 16th December, 1882. The Charles M. Furman whose will has been introduced in evidence was my uncle. He resided in Charleston, S. C., and he was the husband of Jesse Rosalie Perpall. That was her maiden name. He died in 1872.

Q. One of the devisees under the will is Richard K. Furman. Is he living or dead?

A. He is dead. He died in 1874, leaving no children and leaving his a widow, Julia K. Furman, who is still living. She lives in Sumter, S. C., in the county of Sumter.

Q. Were you acquainted with Irwin T. Furman?

A. Yes.

(5) Q. What relation was he to Charles M. Furman, deceased?

A. He was a nephew.

223 Q. Did he have a grandnephew of that name?

A. Yes, sir; Irving K. Furman; you didn't ask which one; Irving K. Furman had a son having the same name. Iriving K. Furman, the elder, died in 1865, and he has two sons living, Bolivar B. and Irving Keith Furman.

Q. Bolivar B. Furman; is he one of the complainants to this suit?

A. Yes, sir.

Q. Irving K. Furman is also living?

A. Yes, sir; he is now living in St. Louis, Mo.

Q. Are you the Charles M. Furman, complainant in this suit?

A. Yes, sir.

Q. The testator mentions in his will his sisters Maria and Ann. Were you acquainted with them?

A. Yes, sir; for many years I lived with them. They were my aunts. Maria Furman died in 1870, two years before her brother, Charles M. Furman. Ann Furman is living, and is the witness whose testimony you have. She is still living, at a very great age—83 or 4 years old.

Q. There are certain provisions in the will for an annuity to these sisters during their lifetime, or for a settlement of moneys which Charles M. Furman admitted he had in his hands and was responsible for. State whether or not any settlement has been made of this claim under the will with Ann Furman.

(6) A. Yes, sir; it has been fully settled; she has now no claim against the estate. The settlement now referred to I think was about 1884 or 5; I can not speak with absolute certainty; some years ago, though. Something like $4,000.00 was paid her in that settlement. This settlement was made by me as administrator.

224 Q. Have you any knowledge or information in reference to your uncle, Charles M. Furman, having or claiming any possession of Anastasia Island, in Florida?

A. My uncle retained his slaves in Florida up to about 1856 or 7. He then moved them all away from St. Johns County to Charleston County, South Carolina. I was at that time living with him a great deal of the time. I spent several years in his house. When I went to school in Charleston I lived in his house, and subsequent to that time I lived a good deal with him, and I know that those negroes were carried from St. Johns, Florida, to Daniels Island, near the city of Charleston, S. C. I knew a number of them.

Q. Were those negroes on Anastasia Island?

A. I wasn't here myself. I could not speak from absolute knowledge, but that is what I have always understood. His property there mainly

consisted in this Anastasia property. I believe he had some sort of claim to a house and lot in St. Augustine, so I understood.

(Counsel for defendants objects to that portion of the answer of
(7) witness as to what he understood as hearsay. Objection sustained.)

No cross-examination.

It is agreed by counsel that the signing of the testimony of this witness is waived.

Complainants' counsel offers in evidence a deed from Julia R. Furman to Alestor G. Furman dated 19th Sept., 1889.

Defendants' counsel objects to the introduction of the same on the ground that there was no seisin in the *the* grantor at the time of the execution of the deed, that the property was adversely possessed, and that there was no title to the property in the grantor.

At this stage of case deed admitted. Exceptions noted.

225 Paper filed, marked "E."

Complainants' counsel offer in evidence deed from Irving K. Furman to Alestor G. Furman, dated 5th of August, 1889.

Defendants' solicitor objects to the introduction of this deed in evidence on the grounds as stated to last above deed offered.

Objections overruled; deed admitted. Exceptions noted.

Paper filed and marked "F."

Complainants' solic'tors offer in evidence the testimony of
(8) Venancis Sanchez, taken in this cause de bene esse.

Testimony filed in evidence and marked "G," subject to objections made to the testimony at the time by Mr. Hamlin, as appears therein.

Complainants offer in evidence a certified copy of an agreement made between Gabriel W. Perpall, as agent of the heirs of Jesse Fish, and Lieutenant Tuttle, of the United States Army, dated Sept. 4th, 1833.

Counsel for defendants objects to the introduction of the same in evidence on the ground that it is not such a document as required to be filed in any department, and therefore a certified copy is not in evidence; 2nd, that it purports to be an agreement, under seal, by an agent or attorney, and there is no evidence of the authority of the agent or attorney to act or to enter into any sealed agreement; 3rd, that it is irrelevant and immaterial.

Objection overruled. Exception noted.

Paper referred to admitted, filed, marked "H."

(9) (Further taking of testimony adjourned to 3 p. m.)

226 (3 p. m. Taking of testimony resumed.)

Present: Same counsel as at the morning hearing.

Complainants offer in evidence three certified township maps showing Anastasia Island, township 7, 8, and 9, certified to by the Commissioner of the General Land Office; same are received and filed in evidence, marked "I," "J," "K."

CHARLES F. HOPKINS, a witness produced and sworn on the part of complainants, testified as follows:

Examined by Mr. FLEMING:

Q. What is your profession or occupation?

A. I am a surveyor—county surveyor of Duval County, Florida.

Q. In the testimony given in this case by Venancio Sanchez he was asked the question: "State, as near as you can, the location, if you know, of what is or was known as the quarries, or King's quarries, on Anastasia Island," to which he answered as follows: "The road leading from the dwelling going east until you come to the cross-road leading south, and continue on a hundred yards or two east, then about same distance north to a pile of stone, and from there go straight to the light-house; that was known as the King's quarries, extending north and east to the water from this line—that is, the line from this pile of (10) stone to the light-house. The old light-house, when I was a boy, stood a half a mile or more from the water; the water has encroached very much on these quarries, being up to where the old light-house stood." Please state whether you have made a survey on Anastasia Island to locate these quarries, based upon the testimony given by Mr. Sanchez as above stated?

227 A. I have.

Q. Have you made a map of that survey?

A. I have.

Q. (Map handed witness.) State whether or not that is the map.

A. This is the map.

Q. Explain by the map the location of the quarries and how you arrived at it.

A. I commenced at the corner common to sections 16, 17, 20, and 21, township 7 south, range 30 east. That corner is standing there—a cedar post about 3 feet—a corner of the United States survey; it is an old and original post. Then I ran a traverse line eastward, following the different courses, until I struck the main road which leads from the light-house southward. I meandered that road down south in a southerly direction, following its course, until I intersected the road leading eastward from the foundations of the old Fish homestead, as it is known. (11) These roads are shown upon the map which I have made, and are located with reference to the section lines as shown on the map. I did not find the pile of stone referred to, as the scrub was very thick and probably it would have taken a long time to find them; but I understand that they were near the intersection of these roads, but have been filled over in building a new road to the beach. The red line drawn from the place where I understand this pile of stone is, or was, to where the old light-house stood, as I understand the testimony of Mr. Sanchez, represent' the west line of the quarries as described by him.

(Map referred to offered in evidence.

Counsel for defendants objects to the introduction of the map in evidence, on the ground that the delineation of the map is not

228 correct, compared with the township map of the United States.)

By the MASTER: Map offered in evidence admitted and filed to show the work of the witness as surveyor in locating the old roads and the red line, the pile of rocks and the old light-house, within the sections or portions of sections as laid down on said map by him, marked "L." And is admitted for such purpose.

Exception noted.

It is agreed between counsel that the witness may hereafter figure the area of Anastasia Island and insert the same in his testimony.

Cross-examination:

Q. You have been United States deputy surveyor? (12)

A. Yes, sir.

Q. Surveyed a great deal of land in Florida?

A. Yes, sir.

Q. Are you familiar with the township maps of the State of Florida?

A. I am.

Q. Please examine the township map in evidence here, township 7, range 30 (marked "I"). State how far from this place, where it was designated to you that the pile of stones was, it is in a straight line to the ocean. In the southeast quarter of section 28, according to this map marked "L."

A. In a straight line, a little over a mile, according to the map.

Q. Taking your map, what do you know as to the character of any pile of stones near the intersection of that road to designate it from any other pile of stones?

A. I don't know, only by the testimony of this man I have spoken of?

229 Q. You don't know anything about it yourself?

A. No.

Q. Are there not along the line of this road running north and south a very large number of evidences of the quarrying of stone all the way down the road?

A. Yes, sir, I have a note of it; I believe Mr. Flagler quarried (13) some there.

Q. State what you know about Mr. Flagler's cutting.

A. I have got the length of it as far as it extends down the line and about the width.

Q. How far is it?

A. I have not the exact measurement.

Q. It is a quarter of a mile, is it not?

A. Yes, sir; and about 75 to 150 feet wide.

Q. Which side of the red line?

A. On the east side of this line [indicating on map].

Q. Of the road traversed, but on the west side of this line [indicating on map].

A. Yes, sir.

Q. It is not generally a coquina ledge all the way down the traversed road?

A. In certain portions, wherever you find sand you found no coquina, for nearly ¼ or ½ mile you wouldn't see any.

Q. Does not the traveled road follow the ledge of the coquina nearly all the way down?

A. I suppose it does pretty near, because there is coquina on the east side, on the west side none until you get below that.

Q. Is it not a hard road?

A. No.

230 Q. From the old lighthouse down?

A. It is a sandy road, and where you strike this coquina ledge (14) it is harder.

Q. Is not the road built on a ledge the whole distance down?

A. It is sandy; I couldn't tell whether it is or not; these excavations had been made all the way down.

Q. Isn't there an old well and an old chimney down there further south of the pile of stone?

A. Yes, sir, I saw that; I didn't go to it?

Q. How far south of the pile of stone?

A. I don't know exactly; 200 yards.

Q. Isn't that called the old Spanish well and old Spanish chimney of the quarries?

A. I don't know.

Q. How far south of this pile of stones has there been mining of coquina?

A. I don't know; right along there is a beautiful road [indicating on map].

Q. Wherever the road is hard it is on a ledge of coquina, is it not?

A. Wherever it is coquina road, yes, sir; going south here as far as I could see it was hard, from that point there south for 3 or 400 yards I believe was no coquina, it was all sand apparently; that ledge appeared to me about from 2 to 600 yards, maybe.

Q. In width?

A. Varying in width, places you find the coquina and places you find the sand. I have notes of those, I measured the length and
(15) estimated the widt'

Q. Is the road from the old lighthouse down to this intersection a turnpike, thrown-up road?

231 A. No, sir; I don't know whether it follows the ledge or not; I saw the coquina one place and another.

Q. Have you any knowledge that that road is located now in the same place it was ten years ago?

A. I presume it has been located there for a great many more years than that; it is the old road through the scrub; the scrub is dense on each side.

Q. May there not have been an older road on either side?

A. No, sir; there could have been, but I don't think there was any such thing there.

Q. Is it not a fact in places there are evidences well marked that they have made a new road along side of the old road?

A. Not that I saw.

Q. Is the road from the Fish homestead to the intersection a turnpike road?

A. No.

Q. What character of road is it?

A. It is flat country after you leave the scrub there, sand and palmetto scrub and marsh.

Q. Have you any knowledge that the road is located now in the same place it was ten or twenty years ago?

A. This old road is the same one.

Q. How do you know it is the same road?

(16) A. I know it is.

Q. You think this road from the Fish lighthouse to the intersection is located about where it used to be for a good many years?

A. Yes, I know it is; in fact, I have been on this portion of it years ago.

232 Q. How long ago did you live in St. Augustine?

A. About forty years, 45 or 46 years ago. I was in St. Augustine at the time this United States survey was made of the beach, the traverse of this island.

Q. Do you know where the roads were located in 1795, any roads on the island?

A. Of course not.

Q. Do you know where there was any pile of stone in 1795?

A. No, sir.

Q. Do you know anything about where the limits or boundaries of the quarries were in 1795?

A. Only from that description and this pile of stone which was said to be there.

Q. Where was all the stone that was put in the sea wall for the southern half of the sea wall obtained?

A. Quarried on the island; I don't know what part of the island.

Q. In quarrying that stone would there not be a great many piles of stone made?

A. Not from the description of these stones this man gave; I
(17) never saw any piles put up on the island of any kind.

Q. Is there not an old chimney standing there still?

A. I did not go to that old chimney there at all; there is said to be one there.

Q. Are not there piles of stone all around where the Spaniards quarried and quarried since, all through that region?

A. I don't know.

Q. How much land would be embraced between the red line that run down on the west and line drawn from where that pile of stone was?

A. You mean between the red line and the ocean?

Q. Yes; the whole thing.

233 A. I don't know; I can figure it from the United States map; it is washed in a great many places.

Q. After you get over this ledge which you say averages 3 to 600 yards——

A. I only estimated that.

Q. What is the character of the land to the east of that?

A. I believe it to be sand; I have been informed it is sand; and to the west of it also; there are very few quarries west of that.

Q. Isn't it deep sand, hard to pull and walk through to the east of the ledge?

A. I don't know; I didn't go through the scrub; after you get over that ridge you strike sand on either side.

Q. That sand is very difficult to walk or pull a vehicle through,
(18) is it not?

A. Not any more difficult than other sand in the country; it depends on the horses you have; they have a road there.

Q. What in you opinion was the reason that this old road follows the course it does? Wasn't it in order to keep upon the hard ground?

A. I think so.

Q. Is not a coquina ledge the hardest ground to be found on Anastasia Island?

A. Yes, sir; but this road is not on the coquina ledge the whole way, only in places; and the coquina ledge, most of it, is east of that road; very little of it west of that road.

Q. Have you ever surveyed the township south of township 7 on the island?

A. I have surveyed all over there.

Q. How far south of this intersection do the quarries run?

A. I don't know; on the road in various places you will find sand, and where you find that there is no coquina; this road is apparently intended to follow the ridge; that road, as far as I could see down,
234 is a beautiful coquina road; there is coquina all over the island, for that matter, in various places, but in my observation most of the quarrying is east of that road.

(19) Q. Were you living in St. Augustine when the sea wall was built?

A. No; I was in St. Augustine in 1850; the sea wall was built in 1835.

Q. As deputy surveyor, &c., state who was Benjamin A. Putnam who signed this map, surveyor-general?

A. Yes, sir.

Q. What other office did he hold?

A. Judge after that, judge of the circuit court.

Q. Where did he reside?

A. St. Augustine.

Redirect examination by Mr. FLEMING:

Q. You say that you lived in St. Augustine 46 years ago and for a number of years afterwards?

A. Yes; off and on some 46 years.

Q. Do you remember when you first lived in St. Augustine these roads that you have been testifying about as being on the island; ever been over there and seen them?

A. I have seen those roads near the light-house, the old light-house. I have been on that many a time, and the road leading from the stone foundations I never traced through.

Q. Still they exist?

A. Certainly; yes, sir.

Q. As far as you know, were they about the same location that the road is now?

A. Just about.

Q. Were they evidently old roads at that time?

A. Yes, sir; I have walked, never clear through to trace the
(20) roads out, but I have been on both of them repeatedly.

(21) (Hearing adjourned subject to call of master.)

235 JACKSONVILLE, FLORIDA, *Nov. 25th, 1896.*

CHARLES F. HOPKINS recalled and examined by counsel for the complainant.

Q. (Certified maps of Anastasia Island, filed in evidence before the master, handed to witness.) Have you examined those maps, and if so, can you state the area of the whole of Anastasia Island?

A. I have examined said maps and am prepared to state the area of the island.

Q. Please state such area, and explain how you have arrived at it?

A. The total area of the island, including the unsurveyed marsh, is $8,041\frac{58}{100}$ acres.

Q. How is that divided up?

A. The total area of the surveyed land, as shown by the map, is $6,690\frac{58}{100}$ acres; the unsurveyed marsh, 1,351 acres.

Q. How do you arrive at the area of the unsurveyed marsh?

A. By protraction from the certified township maps.

Q. What is that road which leads south from the old light-house called?

(22) A. It is called the old King's road.

It is agreed that copies may be made and filed in evidence with the same force and effect as the original of all evidence admitted which is contained in the American State Papers or any official publication authorized by act or resolution of Congress, subject to such objections as are made to the originals.

FLEMING & FLEMING,
Complainants' Solicitors.

W. W. DEWHURST,
Sol. for Mitchell et al., Trustees, and Horace Cummings.
BISBEE & RINEHART.
PARROTT & HAMLIN.

FURMAN
vs.
MITCHELL.

(23) This agreement made part of these proceedings this Nov. 24th, A. D. 1896.

H. H. BUCKMAN, *Master.*

236 The following extracts from the American State Papers, Public Lands, Volume IV, Duff Green edition, are, under the foregoing agreement, substituted as evidence in this cause in place of the said
(24) volume, which was introduced in evidence by the complainant.

237

American State Papers.
Documents,
Legislative and Executive,
of the
Congress of the United States,
in relation to
The Public Lands,
From the first session of the First Congress to the first session of the Twenty-third Congress:
March 4th, 1789, to June 15th, 1834.
Selected and edited,
Under the authority of the Senate of the United States,
By Walter Lowrie, Secretary of the Senate.
Volume IV.
(25) From December 7, 1824, to January 2, 1828.
Washington.
Printed by Duff Green.
1834.

(Page 256.)

Minutes of the proceedings of the commissioners appointed to ascertain claims and titles to land in East Florida for the year 1824.

DISTRICT OF EAST FLORIDA,
BOARD OF LAND COMMISSIONERS,
St. Augustine, Monday, 29th March, 1824.

Pursuant to an act of Congress entitled "An act to extend the time limited for the settlement of private land claims in the Territory of Florida," passed the 19th of February, 1824, and agreeable to public notice, published in the East Florida Herald of the 27th of March, 1824, the board met this day. Present, the Hons. Davis Floyd and
(26) W. W. Blair, and proceeded to open their session for the performance of the duties assigned to their office.

* * * * * * *

(Page 268.) MONDAY, *September 13, 1824.*

The board met this day pursuant to adjournment. Present, the Hons. Davis Floyd and George Murray.

Edgar Macon, esq., United States attorney for the eastern district of Florida, attended the board this day under their order.

* * * * * * *

239 Sarah Fish, 10,000 acres; same, 500 acres; Joseph Summerall, 200 acres; same, 300 acres; same, 150 acres. These cases being called and not being prepared for trial, it is ordered that they be placed at the foot of the docket.

* * * * * * *

(Page 275.) TUESDAY, *December 28, 1824.*

The board met this day. Present, all the members. Edgar Macon, esq., United States attorney, attended the board this day under their order.

* * * * * * *

We certify that the foregoing sheets contain a correct transcript from the minutes of the board of land commissioners since the last report to Congress.

DAVIS FLOYD.
GEORGE MURRAY.
W. H. ALLEN.

Test:

F. J. FATIO, *S. B. L. C.*

(27) ST. AUGUSTINE, *January 1, 1825.*

(Page 288.) PUBLIC LANDS.—CLAIMS IN FLORIDA.

Minutes of the board of land commissioners.

DISTRICT OF EAST FLORIDA,
St. Augustine, Monday, March 28, 1825.

Pursuant to an act of Congress entitled "An act to extend the time for the settlement of private land claims in the Territory of Florida,"

passed March 3d, 1825, the board met this day. Present, the Hons. Davis Floyd, Geo. Murray, and Will. H. Allen, and proceeded to open their session for the performance of the duties assigned to their office. Whereupon it was resolved that Thomas Murphy and Lewis Huguon be appointed assistant clerks to this board pursuant to the said act.

* * * * * * *

240 THURSDAY, *April 21st, 1825.*

The board met this day pursuant to adjournment. Present, all the members.

* * * On motion permission was given by the board to the executors of the estate of Sarah Fish, deceased, to amend the memorials in the claims of said Sarah Fish.

The board adjourned until to-morrow at ten o'clock a. m.

* * * * * * *

(Page 300.) FRIDAY, *December 16, 1825.*

The board met this day pursuant to adjournment. Present, the Hons. Davis Floyd and William H. Allen.

The following claims were this day reported to Congress for confirmation, viz, Teresa Rodriguez, for five thousand five hundred
(28) acres; Wiggins estate, for twelve hundred acres; Sarah Fish's heirs, for ten thousand acres; Domingo Fernandez, for one thousand one hundred and fifty acres.

* * * * * * *

(Page 301.) FRIDAY, *December 30, 1825.*

The board met this day pursuant to adjournment. Present, all the members.

* * * * * * *

The board adjourned sine die.

DAVIS FLOYD.
W. H. ALLEN.

Attest:

F. J. FATIO, *S. B. L. C.*

(Page 276.) PUBLIC LANDS.—CLAIMS IN FLORIDA.

To the Hon. RICHARD RUSH,
Secretary of the Treasury:

The undersigned, commissioners for ascertaining claims and titles to lands in East Florida, report that, in the discharge of the duties assigned to them, they have examined and disposed of the claims herein set forth in the manner and upon the principles exhibited in the following nine classes, numerically arranged:

241 * * * Number three comprehends claims exceeding 3,500 acres, the titles to which were found among the public archives of the country, and are ascertained by the commissioners to be valid Spanish grants, and reported accordingly to Congress for confirmation. On this class the commissioners think it necessary to remark that, although the subject has continued to engage their attention, they have

perceived no principle calculated materially to alter their rules of
(29) adjudication as set forth in their first report. From the most correct information they have received they are of the opinion that the rules for granting lands were, in East Florida, different from those established in the other Spanish provinces. In East Florida the governors seem to have exercised a discretion in granting lands for various purposes to all such as made application for them; but the commissioners have been much perplexed in endeavoring to ascertain the limit of their authority; hitherto their researches have been in vain. That this discretionary power was uniformly exercised by the governors is clearly to be inferred from their own acts; for the first governor after the cession of the province in 1783 made no grants of lands, or but few, and those only in small quantities. The one who succe'ded him (Governor Quesada) established and published rules and regulations for the distribution of the public lands, one of which was the appointment of a commissioner, who, with the assistance of a surveyor, was specially entrusted with the distribution of the public lands. This they did in the following proportions: To the heads of family, 100 acres, and to each other member, of whatever age, sex, or color, 50 acres. Nevertheless, it is found that Governor Quesada made grants in violation of these rules. His successor (Governor White) established rules differing from those of Quesada,
242 and reduced the quantity to be given to heads and other members of a family, and added the condition of ten years' possession before the party should be entitled to a royal title; and White also is found to deviate, in some cases, from the rules established by himself, as well as those of Quesada. There is also a peculiarity in the phraseology of a royal title. In all the grants of this nature the legal right
(30) to grant the lands is as'erted, from which it is clearly to be inferred that the governors considered themselves entitled to, and did exercise, a discretionary power to grant the public lands to those who might make application for them, in such quantities as they conceived might tend most to encourage the population and improvement of the country. By examining the correspondence between the King and the intendants it will be found that they were particularly charged, and especially in East Florida, to promote the population and improvement of the province by all the prudential means in their power. To this end the commissioners find all the governors giving grants of land for the declared purposes of agriculture, pasturage, grist and sawmills, as well as indemnity for losses, and for military services, each of which seem to be embraced in the discretionary exercise of gubernatorial power. The commissioners trace this exercise, with a few exceptions, up to the year 1814, about which period, whether from a change of policy as applicable exclusively to the province or connected with an expected transfer to the United States, a practice of distribution was introduced differing from the former in the magnitude of the grants. Some of these grants favor the belief that the gratification of individual cupidity may have had some influence in their formation, but how far they comport with the laws of Spain, and are entitled to confirmation, the commissioners submit to the superior knowledge of Congress. There is one rule which the commissioners suppose it would not be unreasonable to apply in the

adjustment of these claims. In cases where an application shall
243 have been made for a grant of land as a remuneration for services, or other object embraced in the policy of the Government and the grant shall been made accordingly, if the same individual
(31) shall have made a second application for remuneration for the same services, it would be no more than just to suppose that the first concession was full and ample, unless otherwise recited in the grant itself, and that the subsequent grant was an assumption of power not warranted by the laws and usages nor the policy of the Government.

* * * With the outline afforded by the preceding classification, the commissioners transmit the documentary evidence, and their opinions thereon in each case, in detail. This arrangement of their opinion was suggested by the act by which the board was created, which dictated a minute transcript and investigation of the records, and a periodical accountability to the Secretary of the Treasury; and it was further enforced by the necessity of adjudic'ting on principles between which no summary can afford an absolute or definite line of demarcation; and if the documents transmitted should be considered voluminous, it will at the same time 'be perceived that the features of the claims are various, and that the commissioners in their operations have been guided by the injunctions of the law. These operations have been retarded by the labor which was unavoidable in translation and transcribing the original grants and mesne conveyances, and the inadequate assistance afforded by the employment of three clerks, for which number only the law provides.

The operations of the board, independently of those contained in the first report, have resulted in the confirmation of 326 claims, in the rejection of 61, and in a reference to Congress of 88. Besides these claims there are 528 undetermined, of which 233 are held under advisement to translation; and the commissioners being sensible that the public
(32) interest demands an acceleration of the adjustment of these claims, have to suggest, as a means of promoting this object, that the work of transcribing and translating be performed for a pro rate compensation. All which is respectfully submitted.

Washington, 31st January, 1826.

DAVIS FLOYD.
W. H. ALLEN.

(33) The Hon. RICHARD RUSH,
Secretary of the Treasury.

Register of claims to land exceeding 3,500 acres in East Florida, which are founded on patents or royal titles derived from the Spanish Government, and which in the opinion of the commissioners are valid.

Number.	Names of— Present claimants.	Original claimants.	Date of the patent or royal title.	Date of the concession or order of survey.	Quantity of land. Acs., hdths.	By whom conceded.	Authority or royal order under which the concession was granted.	Conditions.	Date of survey.	By whom surveyed.	Where situated.	Occupation and cultivation. From.	To.
*	* *	* *	*	*	*	*	*	*	*	*	* *	*	*
Cases reported this session.													
21	Heirs of Jessie Fish.	Jessie Fish.	.....	19 June, 1795.	10,000	Morales.	1790	Complied with	.....	.....	Anastasia Island.		
*	* *	* *	*	*	*	*	*	*	*	*	* *	*	*

All of which is respectfully submitted.

DAVIS FLOYD.
W. H. ALLEN.

(31)

ST. AUGUSTINE, *31st December, 1825.*

245 (Page 465.)

No. 1, (a) See report No. 3. Page 283.

Sarah Fish vs. United States, for 10,000 acres of land, Anastasia Island.

Memorial.

To the honorable board of commissioners appointed by Congress to try the validity of titles of lands in East Florida, the memorial of the subscriber respectfully showeth:

1. That your memorialist claims title to the island lying in front (i. e., to the east) of the city of St. Augustine, and running south above eighteen miles, more or less, along the east bank of the river Matanzas, known by the name of the island of St. Anasthatia, supposed to contain ten thousand acres, as belonging to the deceased husband, Jesse Fish, senior, in the year 1763.

2. That in the year 1792 this island was sold at public sale by order of the Spanish governor, Quesada, when her son, the late Jesse Fish, jr., deceased, became the purchaser.

3. That the Spanish governor, Quesada, or his deputy, Morales, from the indisposition of Governor Quesada, with the advice of the King's attorney, Ortega, did then reserve a certain part of the quarry existing in said island; which reservation was made for the sake of the stone only, for the purpose of keeping in repair the King's fortification and other public buildings. The part so reserved has always been known by the name of the King's Quarry, and begins at what is called the King's road

to the south and as far as a small distance to the north of the light-
(35) house; east and west no farther than where the quarry ends, as appears by stakes, and (if not taken away) were planted at the delivery.

246 All of the above explanation will appear by the annexed voucher's delivery of said island, with witness and Spanish custom and receipt from the treasurer for the money.

SARAH FISH.

ST. AUGUSTINE, *31st Aug., 1823.*

[Translation.]

FLORIDA, 1794.

Don Jose Fish, soliciting from the Government that the ten thousand acres of land should be granted to him which his deceased father, of the same name, possessed at the plantation named the Orange Grove, which was sold at public auction, St. Augustine, Florida, 2d of December, 1796.

Senior governor and commander in chief: Don Jesse Fish, native and resident of this city, presents himself to your excellency with the most profound respect—states that, at the public auction which was made of the property of his deceased father for the payment of his creditors, the memorialist purchased the place called the Orange Grove at 1,700 dollars; which sum he only gave with a view to the fruit trees of said place and the wood which is on the land belonging to it, as the land is entirely useless for planting; that he has observed that several residents are cutting the said wood, and therefore he humbly prays your excellency to be pleased to declare him owner of the lands which his said father possessed, annexed to said place of the Orange Grove, which, according to the deeds granted in the time of the British possession, amounted to 10,000
(36) acres, according to what Don John Leslie and Don Manuel Solana can declare, it being well known to them from there having been here at that time, whether it may be as a new settler of this province or by the right which his deceased father had to them. Since, if
247 your memorialist does not obtain this favor from your excellency, he will consider himself as at the greatest loss of the part of his purchase, because the lands will not produce crops of any kind, and a great number of the fruit are dried, which is likely to occur to the remainder of them; a favor which he does not doubt to enjoy from the justice of your excellency.

JESSE FISH.

Let his honor the assessor-general consult with me. Thus it is decreed and ordered by Senor Don Juan Nepomuceno de Quesada, brigadier of the infantry of the royal armies, governor, commander in chief, vice-legal patron, and subdelegate of the royal domain of this city of St. Augustine, Florida, and its province, for His Majesty, who signed it on the 15th December, 1794, which I attest.

QUESADA.

Before me:

JOSE DE ZUBIZARETTA,
Notary of Government.

On the same day this was made known to Don Jesse Fish; which I attest:

ZUBIZARETTA, *Notary.*

I have seen this memorial of Don Jesse Fish, and if directed itself to the setting forth that he would prevent other persons from cutting wood on his lands, or to recover them according to the titles of his property, and the injuries which it had caused or might have caused him,
(37) I would consult on the interlocutory decree with your excellency, according to law, but this memorial ending in making out for Fish the boundaries of the lands which his father possessed at the time of the British dominion, which he desires should be granted to him to the same number of acres which he set forth as annexed to the Orange Grove which he purchased at public auction, held of the property left by the decease of his said father; the said sale, as the present notary
248 states, and setting forth the boundaries of these which this party purchased, when he did the Orange Grove, it remains with your excellency to assign him these which he asked for as a new settler, to which the possession of his father, alleged by him, gives him sound right of preference, and the more if he proves it, or to distribute to him these which your excellency thinks proper, and which may be without injury to another possession; with which hearing in the case it ought to be determined judicially. This is my opinion, which I sign in St. Augustine, Florida, 15th December, 1794.

LICENTIATE JOSEF DE ORTEGA.

ST. AUGUSTINE, FLORIDA, *15th December, 1794.*

In conformity with the foregoing opinion, let the interested make the proof which announces before the present notary, to whom it is committed; and in sight of it, the matter on which it treats shall be decreed upon, for which purpose let the proceedings be brought forward.

QUESADA.

Before me:

JOSE DE ZUBIZARETTA,
Notary of Government.

On the same day, month, and year the foregoing decree was made known to Don Jose Fish; which I attest:
(38) ZUBIZARETTA, *Notary.*

249 In the city of St. Augustine, Florida, the 22nd September, 1795, before me, the notary, Don Jesse Fish presented as a witness for the proof which he was ordered to give Don John Leslie, resident, &c., and merchant of this said city, from whom, in conformity with the commission which was conferred upon me, I received the oath which he made in all form of law, under which he promised to tell the truth to the best of his knowledge in what should be asked him, and it being done so in consequence of the aforesaid petition presented by the said Fish; that, as the person who declares was one of those who, in the time of the British Government, valued the lands, houses, and lots, which Don Jose Fish, deceased, had in his possession, and among them was the plantation named the Orange Grove, which his son of the same name now claims; which he possessed with lawful titles given in the time of the former Spanish Government; and it is known to him that he had the ten thousand acres of land, a little more or less, according to the knowledge and

belief of the deponent, in possession of which he remained peaceably while the British Government held this province; and answers that what he has said is the truth, by virtue of the oath which he has taken; that he is over twenty-five years of age and signed this, which I attest.

JOHN LESLIE.

Before me:

JOSE DE ZUBIZARETTA,
Notary of Government.

In the city of St. Augustine, Florida, the 10th February, 1795, the said Don Jose Fish presented as a witness Don Lorenzo Llanes,
(39) resident of this said city and a native of it, from whom I, the notary, received the oath which he made by God and the Holy
250 Cross, according to law, under which he promised to say the truth in what he knew and should be asked of him; and it being done so in consequence of the foregoing petition, he said that, as a native, which he is of this city, having lived in it both during the time of the old Spaniards, as well as the greater part of that in which this province was governed by the British arms, he is certain of having always seen the deceased, Don Jesse Fish, the father of the memorialist, in possession of the Orange Grove, which, a little more or less, contains the ten thousand acres of land which is stated, which it is also well known to him he possessed, with lawful titles from the old Spanish Government; and he answers that this is the truth under his oath; that he is of the age of forty-five years, and signed this, which I attest.

. LORENZO LLANES.

Before me:

JOSE DE ZUBIZARETTA,
Notary of Government.

In the city of St. Augustine, Florida, in the same day, month, and year he presented as a witness Don Manuel Solana, native and resident of this said city, from whom I, the notary, received the oath, which he made by God and the Holy Cross, according to law, under which he promised to tell the truth to the best of his knowledge in what should be asked him, and being so as to the tenor of what the foregoing petition presented by Don Jose Fish contained, said that, as a native and resident of this said city, in which he has always resided, he is certain that Don Jesse Fish, the person who brings him forward, has possessed in the island called St. Anastasia, the plantation called the Orange Grove, in which he lived since the of the old Spaniards until they
(40) returned to take possession of this province in the year 1784, and
251 since that until '90 or '91, when he died and was buried on the same plantation; and from what the deponent has heard of the result of the survey and valuation, which was generally made before the English had delivered this province to the Spaniards, of the real property of the said Fish, he knows that, at the said plantation, he possessed the ten thousand acres of land, and the deponent corroborates it, a little more or less, from what he has seen on the many occasions when he was at the said plantation; and he answers that this is the truth by virtue of his oath; that he is of the age of 46 years, and he adds that he recollects

that at the time of the old Spaniards the deponent went with the notary, Don Jose be Leen, by command of the Government, to separate the King's quarries on the said island, in order to grant the remainder of it to Don Jose Fish, who solicited it after it was actually granted to him, after having made said separation; that, after the Spaniards returned to take possession of the province, by the treaty of peace with the English, who rented it about 20 years, and the second year of possession the Government commissioned him, with the engineer, Don Manuel de La Roque, and two other workmen, they should designate the old quarries, which they actually did, and they set up four stakes to mark out the lands of the King on the said island, and Fish remained owner of the remainder as he had been; until then he did not sign it, as he said he did not know how to write, which I attest.

Before me:

JOSE DU ZUBIZARETTA.
Notary of Government.

ST. AUGUSTINE, FLORIDA, *12th February, 1795.*

The foregoing proof being completed, and in order to the making a decree now fully, let the whole be submitted to the solicitor of
(41) the royal treasury, that as fiscal of it, he may represent as con-
252 venient in the discharge of his functions; and, with what he may say, let it be brought forward.

Before me:

QUESADA.

JOSE DE ZUBIZARETTA,
Notary of Government.

On the same day the foregoing decree was notified to Don Jose Fish; which I attest:

ZUBIZARETTA, *Notary.*

On the same date it was communicated to Senor Don Gonzalo Zamorano, collector of the royal treasury, as fiscal of it; which I attest:

ZUBIZARETTA, *Notary.*

ST. AUGUSTINE, FLORIDA, *27th February, 1795.*

The collector of the army and the royal domain, as fiscal of it, in the proceedings moved by Don Joseph Fish, on which he was declared owner of the lands which his father possessed annexed to the situation call the Orange Grove, which he bought at auction, and according to the decree of your excellency of the 12th of the present month, in which your excellency was pleased to order that they should be submitted to him, states that, at the sale which was made of the said place, the Orange Grove, to Don Joseph Fish, son of the deceased, of the same name, the boundaries of the land were not taken into consideration, and only the valuation of the trees within the precincts of the said grove, without noticing the 10,000 acres of land annexed to it, according to the report of the notary of the Government and the royal domain, the fiscal minister is of opinion that, although Fish proves by the proofs he has

given in that his father possessed, in the time of the British and
(42) Spanish Government, all that land, he ought to have a right to
nothing more than what he proves by the inventory, valuation,
253 and sale, which was of the said Orange Grove; that this land being laid off, the remainder up to the 10,000 acres of land ought to be sold as belonging to his deceased father, and for the benefit of the creditors of his estate—said Fish getting the preference for as much as another would give; that, for the better proof and elucidation of this proceeding, it seems fit to the minister your excellency should be pleased to order that there be annexed to the testimony the inventory, valuation, and sale of the said Orange Grove, which was sold by auction to Fish at the sum of $1,605.00, and in case that said Don Joseph Fish has occasion for public lands, without injury to a third person, the fiscal minister does not find any objection that your excellency should grant them to him as a new settler according to what His Majesty has commanded of this particular, which is all that offers itself to me for your excellency's information, who will please to determine as appears most just.

GONZALO ZAMORANO.

Let the testimonial which is indicated be placed in continuation, and with it those proceedings returned to the assessor-general, that he may consult with me as to what is proper as respects the other points to which the foregoing fiscal representation refers. It is thus decreed and ordered by Senor Juan Nepomuceno de Quesada, brigadier of infantry of the royal armies, governor, commander in chief, vice royal parron, subdelegate of the royal domain of this city of St. Augustine, Florida, and its province, for His Majesty, which he signed on the 6th of March, 1795; which I attest.

(43) Before me:

QUESADA.

254 JOSE ZUBIZARETTA,
Notary of Government.

On the same day the foregoing decree was made known to Don Jose Fish; which I attest.

ZUBIZARETTA.

Commission.

Don Juan Nepomuceno de Quesada, colonel of the royal armies, governor and commander in chief of this city of St. Augustine, Florida, and its province, for His Majesty: Whereas in the proceedings which took place in this tribunal, arising from the recovery of the estate which remained by the decease of Don Jose Fish, resident that was of this city, for the payment of his debts, on which the proceedings being opened, several creditors appeared on the memorial of the defender appointed for said estate, Don Fernando Arredondo, I have granted permission that there should be valued and sold at auction the lands which result in the said proceedings to be the property of Fish, to avoid the deterioration some them were about to experience, and which would ultimately result to the injury of the creditors, and according to what was resolved

in the decree of the 15th of December last, with the houses and lots of the same. Wherefore, according to what has been decreed by me under date of the 16th instant, I have appointed and do appoint as said valuators, men skilled in such business, Don Manuel Solana and Don Roque Leonardy, the former justice of the peace and the latter ensign of the local militia of it, that, taking into consideration the boundaries and whatever else appears on said proceedings, which extract will be placed in
(44) continuation, and in the presence of the said defender of the estate of Don Vicente Mexias, Don Francisca Revira, as witnesses present, commissioned by the Government for want of a notary, let them pass to said places with proper justice and integrity; for which
255 purpose let the said valuators previously appear before this Government, and then proceed, and then begin the commission in the following form:

9th item. The place called the Orange Grove, which belongs to the deceased, although the title under which he enjoyed it does not appear in the proceedings; and, when concluded, let it be returned, with their account of what has been done, to this government, to proceed further as they may think proper. St. Augustine, 18th January, 1792.

JUAN NEPOMUCENO DE QUESADA.

Valuation.

Valuation and survey of the savannas, lands, and lots belonging to the estate of the deceased Don Jose Fish, made by the appraisers appointed, Don Manuel Solana and Don Roque Leonardy, in virtue of a commission by his excellency the governor and commander in chief of this city and province for his Majesty, in presence of Don Vicente Mexias and Don Francisco Revira, for want of a notary and the assistance of the defender, Don Fernando de la Maza Arredondo:

6th item. The orange grove consists of 540 large orange trees, which are of the best quality, and valued at three dollars, which amount to 1,620 hard dollars; and said property answers to number nine of the commission	$1,620
Idem. Three hundred small ones bearing fruit, at four reals, 150 hard dollars	150
Idem. Two hundred and fifty orange trees to transplant, at three reals, 93 dollars 6 reals	93 6
Idem. Four hundred sour orange trees, at four reals, 200 hard dollars	200
Idem. One hundred and twenty medlar trees, at four reals, 60 hard dollars	60
(45) Idem. Seventy-five fig trees, at two reals, 18 dollars 6 reals	18 6
256 Idem. Seventy peach trees, valued at 12 dollars 4 reals.	12 4
Idem. Eighty pomegranates, at 2 reals, 20 hard dollars.	20
Idem. A plantation of lime trees, valued at	25
	2,180

Which said valuations the said appraisers appointed declared that they had performed well and faithfully, to the best of their opinion. The first

did not sign it, because he did not know how to write; the second did it, with the assistant witnesses and the defender.

In St. Augustine, Florida, the 3d of February, 1792.

VINCENRE MEXIAS.
ROQUE LEOARDY.
FERNANDO DE LA MAZA ARREDONDO.
FRANCISCO REVIRA.

Auction.

In the city of St. Augustine, Florida, 31st January, 1792. I, the governor, with the assistance of the collector of the royal revenue and the defender of the estate of the deceased British subject, Don Jose Fish, and the assistant witnesses, by whom, when it was despatched for want of a notary, according to what is provided in the decree of said month and year, for the auction and sale of said estate which remained to be sold at the sound of a drum and by the voice of a free negro, Francisco Blasco, who performed the duty of a crier: having called together a sufficient portion of the people, he began in a loud and distinct voice to declare the sale to the best bidder, from eleven in the morning of the said day, stating that it was to be sold without reserve; and several bids and outbids having been made by the meeting, and called
(46) for by the crier, without more having been offered, which being finished, the acution, the hour having arrived which was pointed
257 out, was concluded in favor of the individuals and for the prices which follow: To Don Jose Fish the orange grove was laid off, which answers to number nine of the commission, for the sum of 1,605 hard dollars; and there being no person who would offer a larger sum than the foregoing, the hour pointed out being finished, it was ordered that they should be bid off in favor of the aforesaid, interposing therein my authority and judicial decree, as I can and of right ought to do, in virtue of which he was declared the purchaser, and there signed with me, the collector of the royal domain, and defender of the estate, and the assistant witnesses, for want of a notary.

QUESADA.
ZAMORANO.
FERNANDO DE LA MAZA ARREDONDO.
JUAN FULTON.
JOSE FISH.

This is conformable to the commission, ninth clause of it, sixth of the valuation, and that of the auction which originated from the proceedings of the meetings of creditors caused by the death of the Englishman, Don Jose Fish, which remain in the archives in my charge, to which I refer. And in obedience to orders I have caused the present copy, which I sign and seal in St. Augustine, Florida, the 12th March, 1795.

JOSE DE ZUBIZARETTA,
Notary of Government.

Having been seen it was passed over to Don Jose Fish, and was thus ordered and decreed by Senor Don Juan Nepomuceno de Quesada,
(47) brigadier of the infantry of the royal armies, governor, vice royal patron, and subdelegate of the royal domain of this city of St.

Augustine, Florida, and its province, for his Majesty, who signed it, with the opinion of his honor the assessor general, on the 26th of March, 1795; which I attest.

QUESADA.
LICENTIATE ORTEGA.

258 Before me:

JOSE DE ZUBIZARETTA,
Notary of Government.

On the same day, month, and year the foregoing decree was notified to Don Jose Fish; which I attest.

ZUBIZARETTA,
Notary.

On the same day it was communicated to Don Gonzalo Zamorano, collector of royal revenue; which I attest.

ZUBAZARETTA,
Notary.

Don Jose Fish, a new settler in this province, and a subject of His Majesty, in consequence of the proceedings which I am following up, in order to have granted to me the ten thousand acres of land which my deceased father, of the same name, possessed at the place named, the Orange Grove, which was sold at the public auction which was held of all his property left at his decease, before your excellency, in the manner most comformable with law, through the medium of the public solicitor, appear and say that said proceedings shall be delivered to me, the copy which was given me of the representation of the fiscal, informed of the contents of which, and also of the subsequent proceedings of the valuation and auction of the said Orange Grove, the said senor fiscal not giving a solid and convincing reason that his
(48) opinion should take effect, contrary to my right and pretension. And whereas I have sufficiently confirmed it by the proof which I have adduced, proving by it the ancient possession which my father had of said grove, the same for which I have always been anxious, and on which account I have given the excessive price, which the proceedings at auction, copied in the judicial proceedings, show, which sum I would on no account have given for the trees alone, which have been valued much less for the lands which these occupy, in virtue of which I submitted to the consideration of your excellency that I have not enjoyed the least valuable article of the many which my said father left, as
259 even by the possession to which I aspire. I injure my interests, giving more for it than it lawfully is worth, solely impelled by the great love I have for that place, in which I have not only been born, but also brought up and educated—the ancient residence of my dear parents and beloved sisters, who are actually under my protection and charge without any other help to protect them, which I also do for my dear mother, although with very limited means, which can only be obtained from the few trees which have been sold at auction, and to which space only the fiscal pretends to restrict me. Wherefore, and hoping that whatever else may be said in my favor will be taken into consideration, as I can

not express myself properly, from the little knowledge I have in those matters, and for want of director in them, I ask and pray your excellency to be pleased to grant me the said island, as I have solicited; which favor I hope from the justice of your excellency, swearing that I do not proceed from malice and what is necessary, and so forth.

Furthermore, to prove the little value and estimation which the place I claim and bought had, and also my intentions, and that I had
(49) given such a large sum, not alone for the trees, but for the land which I have solicited, I pray your excellency that the present notary in peace continuation a copy of the deed which he presented, asking for the island for a valuation, which are united to the principal proceeding of the meeting of the creditors of the estate of my deceased father, and that he may so certify at foot, as although before it was brought to public sale and auction, there was nothing offered, that all may produce the corresponding effect. I demand justice as above.

JOSE FISH.
BARTOLOME DE CASTRO Y FERRER.

The copy which is solicited in the note being placed in continuation, let the whole be passed over to the fiscal representation. It
260 is thus thus decreed and ordered by Senor Don Jose de Ortega, advocate of the royal council, lieutenant-governor, auditor of war, and assessor-general of this city of St. Augustine, Florida, and its province, for His Majesty, who signed it, in consequence of the illness of the governor and commander in chief, the seventeenth day of April, 1795; which I attest:

LICEN. ORTEGA.

Before me:

JOSE DE ZUBIZARETTA,
Notary of Government.

On the same day the foregoing decree was made known to Don Jose Fish; which I attest.

ZUBIZARETTA,
Notary.

On the same day it was communicated to Senor Don Gonzalo Zamorano, collector of the royal revenue, an attorney for the same; which I attest:
(50)

ZUBIZARETTA,
Notary.

Representation.

FLORIDA, *22nd March, 1792.*

Senor Governor and Commander in Chief: Don Jose Fish, with the greatest respect, states to your excellency that at the auction which was yesterday made of the property of my deceased father there was no person who would bid for the island of the Orange Grove, and that being the place which his father inhabited during his life, the possesson of it would be the greatest satisfaction to your memorialist, obliging himself to deliver for it

sixteen hundred and five dollars in Government bills, in consideration of which and the said island being abandoned, losing much of its value every day, he prays your excellency to have the goodness to order that he be placed in possession of it, a favor which he hopes for from the benevolence of your excellency.

JESSE FISH.

261 This is conformable to the original, which is in folio 135 of the proceedings of the meeting of the creditors of the deceased Don Jose Fish, to which I refer, certifying as I do certify that, at the auction which was made on the 21st March, 1792, which runs to leaves one hundred and twenty-nine of the said proceedings, it does not appear that the Orange Grove was brought forward to public outcry and auction; but, from the various memorials which were presented since said auction soliciting the purchase of some lands, and the plea of the defender of the estate of the said Fish, which run up to leaves one hundred and forty-two, it is evident that said lands of the Orange Grove had no bidder at that sale at auction. And in conformity with orders, I sign and
(51) seal these presents in St. Augustine, Florida, the 20th day of April, 1795.

JOSE DE ZUBIZARETTA,
Notary of Government,
ST. AUGUSTINE, FLORIDA, *4th May, 1795.*

The first officer of the chief comptroller's department of the army, who performed the duties thereof, from the occupation of the collector, who is charged with the administration and judicature of the royal revenue, from the illness of His Excellency the Governor, and as attorney fiscal of the royal revenue, in proceeding moved by Don Joseph Fish, in order that he should be declared owner of the lands which his father of the same name possessed, annexed, to the situation called the Orange Grove, which was sold at auction, and in consequence of the preceding decree of the 17th of the month before, in which orders were given that he should examine them, states that, by the copy annexed to this proceeding it is proved that Don Manuel Solana and Don Roque
262 Leonardy were named as appraisers; that taking into consideration the boundaries which appear in the testamentary proceeding of the deceased Don Jose Fish, that possession which belonged to him was valued in presence of the defender of the estate, Don Fernando de la Maza Arredondo, of Don Vincente Mexias, and Don Francis Revira, as assistant witnesses, for want of a notary; that in consequence of this the said appraisers proceeded only to the valuation of the trees of the said Orange Grove, which amounted to $2,180, without ascertaining boundaries nor the numbers of acres of land which these valued trees occupy, much less made mention of ten thousand acres of land as belonging to the estate of the deceased Don Joseph Fish. But what does not admit of doubt is that in virtue of that valuation of trees the sale of them at auction was proceeded to, and was made to Don Joseph Fish, son of the deceased of the same name, for the sum
(52) of sixteen hundred and five dollars, a little more than two-thirds of said valuation; and consequently the reason of the fiscal attorney, in his opinion of the 27th of February last, is well founded in

considering Don Joseph Fish as owner of the land and trees which the said valuation occupy, which was what was lawfully sold at auction, because until then nothing appeared of the number of acres of which the said Orange Grove consisted—a defect, in truth, very easy to be remedied by the appraisers, since it having been promised to them that they should lay off the land, that they should have done it with particular designation of the land which properly belongs to the deceased Fish, from which defect this new appeal arises. Under these circumstances the fiscal attorney thinks that, in virtue of the proof which has made in these proceedings, he proves that the land or site named the Orange Grove consisted of ten thousand acres of land, and that his intention was, when he bought it, without doubt, under the impression that the ten thousand acres of land which his said father enjoyed would be included in said sale, because separating the land occupied by the
263 fruit trees which were valued, the remainder is not fit for planting, and as respects the defect, a negligence of the appraisers, Don Manuel Solana and Don Roque Leonardy, in laying off the boundaries of said , he considers that it ought not to prejudice the right which favors Don Joseph Fish. From all these reflections, to which this proceedings gives rise, the fiscal attorney concludes, and it appears to him that Your Excellency may order that the boundaries be marked which correspond to the Orange Grove to the number of ten thousand acres of land which he proved belonged to his father and are annexed to the said Orange Grove; or Your Excellency will determine what
(53) you may think most proper, and with your usual justice.

JOSE ANTONIO DE YGUINEZ.

Having examined the proceedings, it was thus decreed and ordered by Senor Don Bartolome Morales, colonel of the infantry of the royal armies, commandant of the Third Bat'alion of Cuba which garrisons this city of St. Augustine, Florida, and political and military governor of it and its province, from the indisposition of the governor who signed it on the sixteenth of May, 1795; which I attest.

MORALES,
LICENTIATE ORTEGA.

Before me:

JOSE DE ZUBIZARETTA,
Notary of Government.

On the same day, the foregoing decree was made known to Don Antonio de Yguinez for his political cognizance; which I attest.

ZUBIZARETTA, *Notary.*

On the same day it was notified to Don Jose Fish; which I attest.

ZUBIZARETTA, *Notary.*

264 ST. AUGUSTINE, FLORIDA, *13th June, 1795.*

To decree more fully let notice be given to the defender of the estate of Don Jose Fish and have the proceedings returned.

MORALES.
LICENTIATE ORTEGA.

Before me:

JOSE DE ZUBIZARETTA, *Notary of Government.*

ST. AUGUSTINE, FLORIDA, *17th June, 1795.*

Don Rafael Saavedra de Espinosa, attorney-general of this city,
(54) and defender of the estate of the deceased Don Jose Fish, who was a resident of this city, and in consequence of the proceedings commenced by Don Jose Fish, son of the aforesaid deceased, appear before your excellency, and in the manner most conformable to law state that I have examined, with all the attention my little capacity allows me, what the son of the said Fish sets forth in favor of his right, and I find that up to this time he proceeded inadvertently to the time when he purchased the place called the Orange Grove at auction, since he ought at that time to have shown clearly and distinctly to what his petition referred; notwithstanding which he now endeavors to remedy his inadvertency by the proof which he now adduced in said proceeding. For all which reasons, and agreeing with the well-founded exposition of the first officer of the royal comptroller's office, Don Jose Anto. de Yguinez, who performs the functions of his honor the fiscal attorney, which exposition is in folio forty-seven, on which reference is made to the want of precaution with which the appraisers, Don Manuel Solana and Don Roque Leonardy, proceeded, who ought to have shown at that time the boundaries which that land had, by advertising to which they would not only have given full effect to their commission, but also obviated the present litigation, and consequently it would have operated with entire effect in the present case and with-
265 out waiting for the injury done both the estate and the mover of these proceedings, for which reasons (it appears to me) that your excellency may grant to Don Jose Fish the ten thousand acres of land which his deceased father of the same name possessed, and especially your excellency will decree, according to what is every day exhibited in your judicious decrees, this being all I have to say as defender of said estate in compliance with the discharge of my duty.

(55) RAFAEL SAAVEDRA DE ESPINOSA.

Having examined those proceedings and seen the proof adduced in them by Don Jose Fish, it appears not only his father of the same name possessed since the time of the old Spaniards and in that of the British dominion the 10,000 acres of land, possession of which he claims at the place called the Orange Grove, which he purchased at public auction, but also that he made a bid for the said land, under which his purchase ought to be understood, which defect in not explaining it thus at that time should not be prejudicial to him, and has given cause to this litigation. His excellency said that declaring it, as he declared now, he ordered in consequence that whether by the right which the burdensome acquisition of the said land gives Fish, which cost him 1,605 dollars, which it appears he paid for the purchase of the Orange Grove, or by the right which the ancient possession of his father gives him to the said 10,000 acres of land, or finally in consequence of the petition of Fish, that they should be granted to him as a new settler, he be placed in possession of the said land, which it appears his said father possessed, and is already laid off, with the reserve of the quarries, and the remainder, which was not granted to his said father, and which the King has reserved, renewing, in case of necessity, at the cost of the interested, the boundaries by said
266 appraisers, Don Manuel Solana, who at the time of the old Spaniards and at the new possession by them of the province laid off

by order of the Government, the aforesaid quarries, to give possession, as is proven, to the father of the memorialist of the land which he claims, and let them be granted to him on the terms above set forth, the present notary, who is commissioned for the purpose, when with the said appraisers, and any other workman that may be necessary, he shall assist at marking the boundary, at which also shall assist, to represent the royal treasury, the person whom the minister of the royal domain may depute for the purpose. All of which shall be made appear on the proceedings with which, and the taxation of the costs, which the interested shall satisfy, this proceeding shall be held as concluded. It was thus decreed and ordered by Senor Don Barlolome Morales, colonel of infantry of the royal armies, commandant of the third battalion of Cuba, which garrisons this city of St. Augustine, Florida, and political and military governor, who signed this, with the opinion of his honor the assessor-general, on the 19th June, 1795, which I attest.

(56)

BARTOLOME MORALES.
LICENTIATE JOSEF DE ORTEGA.

St. Augustine, on the same day, month, and year, the foregoing decree was notified to Don Jose Fish, which I attest.

ZUBIZARETTA, *Notary.*

On the same day it was intimated to Don Rafael Saavedra de Espinosa for his cognizance.

ZUBIZARETTA, *Notary.*

On the same day, month, and year, it was communicated to the collector of the royal domain for his fiscal cognizance.

ZUBIZARETTA, *Notary.*

Proof of boundary and possession.

267 Being at the plantation called the Orange Grove, in the island of St. Anastasia, on the tenth of July, 1795, in conformity with what is provided in the foregoing decree, we proceeded to the marking the boundaries of the land comprised in these proceedings. Don Manuel Solana, the appraiser appointed for the purpose, passing from said place to where the quarries of the King and of individuals are situated, who, passing along the ancient boundaries with Don Jose Lorente, chief master of the royal works, who accompanied him to inform himself, Don Tadeo Arribas, officer of the royal comptroller's office, from the employment of the collector, for his fiscal cognizance, and I, the present notary, went fixing up stakes to point out said boundaries across the island, and separated the said quarries, saying that all besides them was what corresponded to Don Jose Fish; to whom, being also present, I, the said notary, in discharge of the commission which was conferred upon me, put him in possession of the land pointed out, leading him into it by hand, and riding together on horseback by various places, until arriving at the dwelling house; all of which I did as a token of said possession, which he took quietly, peaceably, and without contradiction. In testimony of which and for the due proof I have extended

(57)

the present proceedings, which all signed, with the exception of Solano, who said he did not know how; all of which I attest.

TADEO DE ARRIBAS.
JOSE FISH.
JOSE LORENTO.

Before me:

JOSE DE ZUBIZARETTA,
Notary of Government.

268 I, Francis J. Fatio, secretary of the board of land commissioners for East Florida, do hereby cert'y that the foregoing is a true and correct translation from a document in the Spanish language on file in the office of public archives.

(58) F. J. FATIO, *S. B. L. C.*

[Translation.]

Having seen that of the jurisdiction set forth in these proceedings by Don Joseph Fish it not only appears that his father, of the same name, possessed since the time of the old Spaniards and during the British dominion the 10,000 acres of land, which possession he claims at a place called Vergel, which he purchased at public auction, but also he fixed a price to the said land, according to which sale ought to have taken place, which defect in not making it known at the time of the same ought not to injure him, and which has given cause to this litigation, his excellency said that, declaring it, as by these presents he does declare, and ordering in consequence by the right which the honorable acquisition of the said land, purchased in the sum of 1,605 dollars, gives to Fish, as is proven by the sale which he paid for the burgal, or by the right given him by the old possession of his father of the above-mentioned 10,000 acres of land; or, lastly, in consequence of the petition of Fish that it should be granted him as a new settler, he be put in possession of the land which is known his father possessed and is already laid off, with the exception of the quarries, and also what was not granted to his said father and was always reserved by the King, renewing, if thought necessary, at the expense of the interested, the boundaries by the same skilful person—Don Manuel Solano—who, at the time of the old Spaniards and the repossession of these of the province, laid off by order of Government the aforementioned quarries, to give possession as was
269 effected to the father of the memorialist of said lands, and he is granted on the same terms as above set forth, giving him possession thereof by the present notary, who is commissioned for that purpose, whenever the skilful person named and some other person
(59) that may be named for the purpose of laying off the same, and also the minister of the royal finance, who will attend as representative of the royal exchequer; all of which will be made to appear in the returns and with the valuation of the costs, which the interested will pay, these proceedings will be at an end. Being thus decreed and ordered by his excellency Don Bartolome Morales, colonel of infantry of the royal armies, commandant of the third battalion of Cuba, which garrisons this city of St. Augustine, Florida, and military governor pro tem.

of the same and its province, on account of the indisposition of the incumbent, signing it, with the advice of the attorney-general, the 19th of June, 1795. I attest.

BARTOLOME MORALES.
LICENTIATE JOSE DE ORTEGA.

Before me:

JOSE DE ZUBIZARETTA,
Notary of Government.

Notification.

In St. Augustine, on the same day, month, and year, I notified the preceding decree to Don Jose Fish. I attest.

ZUBIZARETTA, *Notary.*

On the same day I addressed Don Suavedra de Espinosa thereof, on account of his agency. I attest.

ZUBIZARETTA, *Notary.*

On the same day, month, and year I made it known to the accountant of the royal finance, Don Gonzalo Zamorano, as attorney of
(60) the exchequer. I attest.

ZUBIZARETTA, *Notary.*

270 Being on the plantation named Vergel, situated on the island of St. Anastasia, the tenth of July, 1795, in conformity with what is ordered in the foregoing decree, the measurement of the land comprised in these proceedings was proceeded to, and Don Manuel Solano, a skilful person named for the purpose, proceeded to the place where the quarries of the King and private persons are situated, who passed along the old boundaries with Don Jose Lorente, master workman of the royal works, who accompanied him for the purpose of being informed thereon. Don Tadeo de Arribas, officer of the royal accountant office, on account of the occupation of the accountant as attorney of the exchequers, and I, the present notary, placed the stakes for the purpose of pointing out said boundaries, according to the width of said island, separating the said quarries, making known that all the rest was what belonged to Don Jose Fish, to whom I, the said notary, being likewise present, according to the commission conferred on me, gave him possession of the land pointed out, taking him thereon by the hand, riding together on horseback on different parts until our arrival at the dwelling house; all of which he done as a sign of having taken quiet and undisputed possession of the same without opposition. In testimony of which, that it may be duly made known, I made out the present returns, which all signed except Solano, who said he did not know how; and to all of which I attest.

TADEO DE ARRIBAS.
JOSEPH FISH.
JOSEPH LORENTE.

Before me:

JOSE DE ZIBIZARETTA,
(61) *Notary of Government.*

271 According to its original presented in the proceedings on the subject to which I refer, and at the request of the party do seal and sign the present copy on two leaves of ordinary paper, stamps not being used.

St. Augustine, Florida, 29th March, 1788.

[SEAL.] JOSE DE ZUBIZARETTA,
Notary of Government.

[Translation.]

Don Bartolome Benitez y Galeoz, intendant elect of the province of Ylocos, in the Phillipine Islands, and treasurer of the royal finance in this city, received of Don Joseph Fish, resident of this city, 13,880 reals in specie, deposited in these royal chests under my charge, being the amount of a lot opposite Pedro Garcia and the plantation called the Bergel, appertaining to the will of his deceased father, which was purchased by him, as is communicated to me from the principal accountant's office in an official letter of the 12th inst., and of the above 13,880 reals in specie I take charge as a deposit, in virtue of this receipt, of which an account will be taken by the accountant of the royal finance, with the approval of his excellency the governor of this said city and province of St. Augustine, Florida, 19th of April, 1792, on account of the indisposition of the treasurer and his substitute.

PHILIP DE AGUIRRE.

13,880 reals in specie.
I took an account of the same.

GONZALO ZAMORANO.

(62) Approved:

QUESADA.

272 A copy from the original on file in this principal accountant's office, and this is made out that it may serve out as a security to the interested.

St. Augustine, Florida, 19th April, 1794.

G. ZAMORANO.

I certify the foregoing to be a true and correct translation from a document in the Spanish language.

F. J. FATIO, *S. B. L. C.*

Decree.

The board having ascertained the above to be a valid Spanish grant for the 10,000 acres of land, do therefore recommend it to Congress for confirmation.

(63) December 16, 1825.

(Page 400.) PUBLIC LANDS.—CLAIMS IN FLORIDA.

No. 474. Land claims in East Florida. Communicated to the House of Representatives February 23, 1826.

TREASURY DEPARTMENT, *February 21st, 1826.*

SIR: In obedience to a resolution of the House of Representatives of the 7th instant, directing the Secretary of the Treasury to communicate

to the House copies of the registers or abstracts of the claims to lands in East Florida, lately deposited in this Department by the commissioners of that district, under the quantity of 3,500 acres, with the general report of said commissioners, containing their reasons for the admission or rejection of the said claims, and full copies, with the evidence and decision of all claims over that quantity which have been made, and lately deposited in the Treasury Department, I have the honor to transmit herewith copies thereof.

I have the honor to be, with great respect, your most obedient servant,

RICHARD RUSH.

(64) To Hon. the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

(For reports of the commissioners, dated 1st and 31st of January, 1826, see pages 275, 276, and 277.)

273 ST. AUGUSTINE, FLORIDA,
Wednesday, December 2, 1896.

Continuation of taking of testimony in the case of Furman et al. vs. Mitchell et al. before me, the undersigned, as master, at this place, on this date, pursuant to notice to counsel heretofore given.

Present, F. P. Fleming, esq., solicitor for complainant; W. W. Dewhurst, esq., solicitor for defendants.

Testimony and proceedings.

WELLS R. STOKELY, a witness produced on the part of complainants, being duly sworn, says:

I reside on Anastasia Island, in St. Johns County, Florida, and have resided there seven years and three months last past; am familiar with the lands on the island.

Q. The defendant in this case, the Florida Coast Line Canal & Transportation Co., claim title to lots one and two of section twenty, the northwest quarter and the east half of the southwest quarter of section 28, and lot five in section 32, all in township seven south, range thirty east. Please look on the map which is filed in evidence, embracing said lots, and state whether or not said company is in actual possession of said lands or any part of them.

(Which question is objected to by W. W. Dewhurst, esq.,
(65) defendants' attorney, on the ground that it calls for a conclusion of law on the part of the witness.)

By the MASTER. Objection overruled.

Exception noted.

Township map in evidence handed witness, marked "I."

274 A. There is no one in possession that I know of; no one living there; no fence; no buildings of any kind.

Q. State whether or not Horace S. Cumming is in actual possession or occupancy of the east half of the southwest quarter and the east half of the northwest quarter of section 28, township 7 south, range thirty east.

(Defendants' counsel here asks same objection as to previous question, which is here noted.)

By the MASTER. Objection overruled.

Exception noted.

A. He is not living on it, and has no improvements on it that I know of in any shape. There are no fences and no houses on it.

Q. The St. Johns Railway Company claim title to lots three and eight of section 21, lot one of section 29, the west half of the northeast quarter, and the northeast quarter of the southeast quarter of section thirty-three, township 7 south, range thirty east. State whether or not said company is in the actual possession or occupation of any of it.

(Counsel for defendants asks same objection as to previous question, which is here noted.)

By the MASTER. Objection overruled.

Exception noted.

A. I know of no one living on the land, and know of no improvements of any kind on those pieces.

(66) Q. John A. Henderson claims title to lots 1, 2, 3, and 4 of section 17, township 7 south, of range 30 east. State whether or not the said Henderson is in the actual occupation or possession of any of the said lots.

A. He is not living on it, nor has no improvements on it. The only improvements I know on that is the South Beach Railway passing through it. I can't exactly tell which lots it exactly passes through, but it runs close to the middle of them, between lots 1, 2, 3, & 4.

275 Q. The trustees of the Internal Improvement Fund of the State of Florida claim title to the northwest quarter of the southeast quarter, the south half of the southeast quarter, and the west half of the southwest quarter of section 28; lots 3, 4, 7, and 8 of section 34; the northwest quarter of the northeast quarter, the southwest quarter of the northeast quarter, the southeast quarter of the northeast quarter of section 28, township 7 south, range 30 east. State whether or not said trustees, or anyone holding under them, are in the actual possession or occupation of said lands or any part of them.

(Question objected to by defendants' counsel as calling for a conclusion of law on the part of the witness.)

By the MASTER. Objection overruled.

Exception noted.

A. They have made no improvements on any of those pieces of land; no improvements of any kind at all; nor do I know of anyone

(67) for them who has, or of anyone living on them.

Q. The State of Florida claims to have entered from the United States Government lots 2, 4, and 7 of section twenty-one, lots 1 and 4 of section thirty-two, lots 2, 5, & 6 of section thirty-four, township 7 south, range 30 east. State whether or not anyone holding title under the State of Florida is occupying or in the possession of said lands.

A. I know of no one in possession of any of them except myself. I have been in possession of lot four over seven years, and my son, who is in possession of lot seven. We both claim a homestead upon these lots under the laws of the United States by virtue of application to the United States for homesteads. Neither of us claim under the State. These homesteads are not yet perfected. The Secretary of the Interior of the United States has the same under consideration.

276 Cross-examination by W. W. DEWHURST, Esq.:

Q. You say you claim homestead entry on lot four; do you claim entry under Charles W. Furman?

A. I entered on the land as a homesteader under the laws of the United States. My son did likewise on his lot, under the same claim of title, under the laws of the United States.

Q. Were there any other entries of like character about the same time you entered yours? If so, how many upon the lands testified to by you as claimed by the trustees of the Internal Improvement Fund?

(68) A. Some forty applications were made just before we made ours. Ours were about the last made on these lands claimed in sections 34 and 28. I can't tell exactly how many applications there were.

Q. How many such applications can you remember—how many persons who entered into the actual occupation of those lands under any claim of title in the United States?

A. I think Mr. Harrington and Mr. Beach, myself, and my son the only names of any persons I can now recall.

Q. Were there others who entered on other lots in sections 21, 27, 28, 33, and 34, about the same time you made your entries?

(Objected to as not a proper cross, except as to any of the lands in those sections as to which the witness was interrogated in chief.)

By the MASTER. Objection overruled.

Exception noted.

A. All made before; all who entered at all sometime before.

Q. What acts of occupancy, if any, or indication indicating ownership of the lands of which you have testified to in your direct examination, had been taken by Charles M. Furman and those claiming title under him at the time you entered upon this lot 4 of section twenty-one?

277 (Objected to by complainants' solic'tor as not being in any sense in cross of any testimony given by the witness in his direct examination, no questions having been asked him and no testi-

(69) mony given directly or indirectly in reference to possession or occupation of Charles M. Furman.)

By the MASTER. Objection overruled.

Exception noted.

A. I don't know of any occupancy or improvements of any kind on the lands except in section 29; there was a house and some improvements there.

Q. Give a description of the character of these lands, and their condition, of which you have testified to. Were they occupied by anyone at the time of your entry or that of others was made?

A. I don't know of any occupancy. Part, or marsh lands, part covered over with different growth' of cedar, magnolia, &c.; no cultivation; no evidences of old broken fields. They are all wild and uncultivated lands; no evidences of former cultivation except where the stone was taken out. That is the only thing I know of.

Q. You speak of where stone was taken out. Describe as nearly as you can the location of lands from which stone has been taken.

(Objected to by complainants' solic'tor as immaterial and not proper cross.)

By the MASTER. Objection overruled.

Exception noted.

A. Stone was taken out in sections 28, 31, and they may have taken out a little from sections 33 and 34. The evidence of the quarrying of stone is shown by a good many pits, quite a scope down through there showing stone has been quarried; pits, and places where some stone is left in yet; some piles of stone; some still there around in places;
(70) some places did not get it all out.

278 Q. Can you say whether or not the trustees of the Internal Improvement Fund, the St. Johns Railway Company, the East Coast Canal Co., or either of them, had not granted permits to quarry stone on the lands testified about within the last seven years?

(Objected to by complainants' counsel as immaterial and not proper cross.)

By the MASTER. Objection overruled.

Exception noted.

A. Can't say; I don't know of anyone that has taken out any stone. I have not noticed any being quarried in that time. I never saw any hauled off.

Q. Do you know that any of these defendants have not given permits to take shell off of those lands in the last seven years?

(Complainants' counsel ask same objection to last above question, which is noted.)

By the MASTER. Objection overruled.

Exception noted.

A. I don't know of any permits being given. I know of some parties who tried to take shell off of lot seven and were stopped. Don't know who gave the parties permits to take shell. A Mr. Capo tried to take some and my son stopped him. There has been some shell taken off of lot six, section 21, by two or three different parties, but don't know who gave them permits.

Q. Was not all the shell for the building of the Ponce de
(71) Leon Hotel taken from off that island within the last nine years?

A. I understand most of it was. I can't say who gave them permission. This was before my time.

Q. Do you know that the defendants above named have not given permits to cut wood off of this land testified about in the last seven years?

279 A. I don't know of any permits. I think some wood has been cut during that time by parties clearing up the land—some, I think. They sold whatever they did not need. Don't know of anyone doing this except actual homestead settlers or claimants on the land clearing up.

Q. Have any other persons except the homestead claimants cut wood, removed shell, or exercised acts of ownership over these lands for the last seven years?

A. Parties have come in and took shell from some parts, I can't say who now.

Q. Did you or your son sell shell to the South Beach Railway people?

A. I let them have some to improve the streets, but never was paid for it. This was taken from lot four.

Q. State, as nearly as you can, over what sections the South Beach Railway runs, from the west to the east side of the island.

A. It runs through section 17, between lots 2 and 3, 1 and 4; then across the Rodrigues grant and Sanchez grant; then through lots 7 and 9 in section 21, through the northeast quarter of section 28, then
(72) down through lots 2, 3, 4, and 5, and maybe 6, of section 27. This is as near as I can locate it. The road has been there for seven years—part of it; part of it has been built within that time.

Q. State what portion of lands in sections 21, 27, and 28 are within the military reservation.

(Objected to by complainant's solicitor as improper.)

By the MASTER. Objection sustained.

Q. Are any of the lands testified about in sections 21, 27, and 28 within the military reservation?

A. I don't think they are.

280 Q. Were you living on the island in 1893 & '94?

A. Yes.

Q. Was not a survey of lands made of sections 21, 27, & 28 during that time by the United States?

A. I think there was.

Q. What did the United States do in the matter of surveying, and the time when it was done?

A. They surveyed over 50 to 100 feet back and forth, I think; I don't know the distance; cut out a path, run on the south line of lot two; put up corner stones. This was done about 1893, I think; have forgotten the exact date. The stone put up by them are concrete, I believe.

Q. State as to the occupancy of any lands embraced within that survey since 1893 that you know of.

(73) (Objected to by complainant's solicitor, on the ground that the same is immaterial and not proper cross.)

By the MASTER. Objection sustained.

Exception noted.

A. I don't think any of the lands testified about are within the lines of the survey.

Q. Are you contesting the right of the State to lot 4, section 21, before the Land Department of the United States?

A. Yes.

Q. Your son the same to lot 7?

A. Yes.

Q. Has Charles M. Furman brought suit in ejectment against you or your son?

A. He has against my son; not against me.

281 Redirect examination:

Q. Have any of these homestead entries as to which you have testified been allowed by the United States?

A. No; I think not.

MICHAEL F. HARRINGTON, another witness produced and sworn on the part of the complainants, deposes and says:

I live on Anastasia Island, and have lived there seven and a half years and better. I remember the description of the lands on
(74) which I reside. It is the southwest quarter of the northeast quarter of section 28, township 7 south, range 30 east. I know the location of the old road running southward from the light-house; it passes my house within forty feet; I am on the west side of this road. I am familiar with the old road running eastward from what is known as the Fish homestead, which road intersects the old Light-house road. My house is about 300 feet from the last-named old road; the road is south from my house; I live within 300 feet of the intersection of these two roads.

Q. State whether or not you ever discovered a pile of stones near the intersection of these roads. If so, give the location of it and describe it as near as you can.

A. These stones I have looked for, hearing so much talk about them as being a line of the quarries. About forty feet from the intersection of the roads leading from the Light-house and the Fish Island road there is one pile of stones about six feet square, piled up in an oval shape, covered with weeds, vines, and everything. I threw them into a road-bed last season, cutting a new road. There is also another pile north about twelve feet from this one. These I also put in the road. They were also covered with moss, vines, and everything. These piles of stones were on the east side of the Light-house road, and had the appearance of having been there a very long time.

282 Q. You say you had heard considerable talk as to these piles of stones as being the line of the quarries? What did you under-
(75) stand as being the line of the quarries from these stone piles?

(Question objected to by defendant's counsel as immaterial and improper.)

By the MASTER. Objection overruled upon the understanding that the information shall be more definite.

A. North; I looked the quarries all through for the last six years for these piles of stones that I had heard about till I found them. They were the only piles of stones in the quarries that would in anyway designate a line or were put there for such purpose.

(Answer objected to by defendant's counsel, as witness has shown no knowledge of the purpose for which the stone was put there and appears to have none, and moves to strike out that portion of the witness's answer.)

By the MASTER. The objection as to last part answer is sustained, and the motion will be granted unless the witness can show by competent evidence proper knowledge upon such subject. The subsequent testimony of witness the master deems suffic't to deny motion.

Exception noted.

Q. You say north; what did you understand was the northern terminus of the line, if you had any knowledge on the subject?

(Objected to by defendant's counsel as immaterial and incompetent.)

By the MASTER. Objection overruled.

Exception noted.

283 A. The old light-house.

Q. Which side of this line did the quarries lie, as you understand?

A. To the westward.

Q. What is the west boundary of the quarries?

A. The line running to the light-house from the pile of stones would put the quarries on both east and west side of it, but the greater portion of the quarries is on the west side, between this line and the light-house road.

Q. What is your information in reference to the quarries, the old King's quarries?

A. From the Fish Island road north I got this information from Mr. Sanchez and the old settlers here, and the quarries of the people were to the left hand south and the King's quarries to the north.

Cross-examination:

Q. How wide are the quarries from this pile of stones to the light-house?

A. They—that is, the excavations—vary all the way from 40 feet down to ten feet, some places less than that. The ledge of stone is about 250 feet, as near as I can tell.

Q. The old road that runs north to the light-house—give its relative location as to the coquina ledge.

A. It runs right through, or thereabouts, the middle; follows it right straight up. I looked for the pile of stones by hearing people talk
(77) of them as the designation of the quarries and to see if I was in the quarries myself or not. The southwest quarter of the northeast quarter of section 28 is within the quarries—what they claim to be the King's quarries. From the pile of stones a line from them to the light-house would be to the west line of the quarries about 250 feet; that is, where the coquina stone is.

284 Q. To the east of the line running from the pile of stones to the old light-house, what is the character of the land?

A. Sand; some stone covered with shell on the east side; east of it to the ocean there is sandy land; width of fringe of stone to the east of this line is about fifty feet. About five years ago I commenced search for these piles of stone. Besides Sanchez, I heard Many Lopez and William Sanchez speak of these piles of stones. Lopez is clerk for Mr. Venancio Sanchez. The ledge of coquina extends about four miles or more south from the old Fish Island road. The stone south of the Fish Island road is better than the stone north of the road. Indications are numerous right along for four miles below or south of the Fish Island road to show stone was mined there, and stone dressing is also seen to show where the stone has been dressed. Have understood, but do not know, that the quarries south of this road have been mined indiscriminately by St. Augustine people; none mined in my time since I have been on the island.

Q. Is it not generally understood in this community that the people have indiscriminately, freely, and without restriction used these quarries?

(78) (Objected to as immaterial and improper.)

By the MASTER. Objection overruled.

Exception noted.

A. Yes; have so understood that the quarries south of Fish's Island road was for the use of the people, and so laid off by the King. I got this understanding from Mr. Mickler, Mr. Capo, and others, and a good many of older citizens here; I couldn't tell how many. I said that Mr. Sanchez and Mr. Lopez had told me about the pile of stones, but as to the quarries I got that information from these people as above stated. Fish's Island is an island down south of here in section 29, by the township map in evidence; it lies west of Anastasia Island proper and is separated by a stream that meets a little inlet; also by a marsh diked off at both ends to keep the tide out in old times. It is commonly
285 known as Fish's Island, as far as I can learn or know. I never heard Mickler or Capo say anything about these piles of stone; I never heard Sanchez say who put them there; he said they were put there when they staked the lands across the island when the lands were turned over to the Fish heirs; said they were put there to designate the line of the quarries; it designates the line to Fish's Island, and the line of the quarries to the north designates the line of the Fish Island road; it is the north and south line of the quarries; I only know who put them by hearing them talk about it; I went and looked for them and found them as stated.

(79) Q. Outside of Sanchez's statement, and viewing these stones, with the moss, &c., upon them, might they not have been put there inside of thirty years?

A. No, sir; I don't think so.

Q. Would not fifty years give them indications of the age that they possessed?

A. Yes; it would give them an indication of age, I could not say more or less; should suppose fifty years would give them that indication.

Q. How far is it from the old light-house road to the west of the line of the ledge of rocks?

A. About 100 to 120 feet; in some places might be 150 feet, to the east it would be about the same distance.

Redirect examination:

A. Fishs Island is not, to my understanding, part of Anastasia Island; it is surrounded by water only on high tides; that is why it was diked; ordinary high-tide water would surround it.

Q. What water is on the west side of what you call Fishs Islan'?

286 A. Matansas River; there is no open stream extending all around the island; there would be if it was not diked, that was when the tide was up; there is marsh, but if no dike there would
(80) be a stream through it; I can't say if this stream would be through it all the way round.

Q. Are there any quarries on Fishs Island?

A. Not to my knowledge, I never heard of any; I have been all over it; the character of the land on Fishs Island is all capable of cultivation; it is sand and shell land.

Q. Any cultivatable land in other parts of Anastasia Island?

A. Yes, sir; where I live and where other settlers live; but that is not Fishs Island as I understand.

Q. Do I understand you to testify that from common rumor and information in this community, that the quarries reserved by the King lie northward from the Fishs Island and this pile of stones you have referred to?

A. Yes.

By Mr. DEWHURST:

Q. How can you now say or make the statement that the King's quarries lay north of this road and pile of stones; from whom did you get this information?

A. At the time Mr. McGuire, in 1894 or '95, sent men to take stone I stopped them with a gun; this is the time I found it; after that I learned from one citizen and then another that the quarries south of Fishs Island road were the people's quarries, and north of that the King's quarries reserved by the King. Mr. Mickler, Dan Mickler, Mr. John Capo, old John Capo, and several others I can't exactly now recall, said the people had the right to take stone and nobody could stop
(81) them in the people's quarries; I stopped some in the interest of myself and the other homestead settlers, considering we had the right through our homestead claims.

287 VENANCIO SANCHEZ, another witness produced and sworn on the part of complainants, deposes and says:

Q. You have already testified in this cause, and stated that as agent for Charles M. Furman you paid taxes for lands on Anastasia Island; look at these receipts handed you and state whether or not they are receipts for taxes paid for Anastasia Island lands.

(Witness is handed certain papers purporting to be tax receipts, marked for identification from 1 to 9 both inclusive, who, after examining same, says:)

A. They are.

(Complainants offer receipts in evidence, and the same are filed in evidence by the master, marked 1 to 9 both inclusive.)

A second lot of receipts is handed the witnes', who is asked whether or not those receipts for taxes paid on Anastasia Island land, which are six in number, all dated in 1889, and are marked for identification from 10 to 15 both inclusive.

(82) WITNESS (after examin'g the same, answers). Yes.

(Receipts are offered in evidence by complainants and the same are filed by the master, marked 10 to 15 both inclusive.)

Witness further answers: I sent the first lot of receipts examined by me to Charles M. Furman, now dead; I sent the last lot examined by me to the present Charles M. Furman, or to his son, I can't say exactly, but I think to the present Charles M. Furman, at Greenville.

Cross-examination.

288 A. I paid those taxes as agent and also as owner of the island. I was agent of Charles M. Furman and claiming an interest as part owner of the island in my own right; was agent of Furman from the time of the payment of the first taxes up to payment of the last taxes. He had no other agent here during that time. I was his only agent.

(Complainants offers in evidence certified copy of deed trustees I. I. fund of Florida to Jno. A. Henderson to lots 1, 2, 3, 4, sect. 17, and other lands which is filed in evidence marked M.)

Here the further taking of testimony was adjourned, same to be taken up before me upon further notice.

(83) H. H. BUCKMAN,
Special Master.

289 JACKSONVILLE, FLORIDA, *January 19th, A. D. 1897.*

The further taking of testimony is this day continued.

Present: F. P. Fleming, esq., of Fleming & Fleming, representing complainant; C. D. Rinehart, esq., of Bisbee & Rinehart, representing complainant; W. W. Dewhurst, esq., representing the defendant.

Before going into the testimony in behalf of the defendant, solicitor for defendant gives notice that he being of the opinion that the court has no power to appoint a master with power to make return of his findings upon the law as well as the facts in cases of this character, that he hereby gives notice that before the master shall make his report in this cause he will call this matter to the attention to the court for his decision thereon.

And thereupon the defendants, Mitchell et al., to prove the issues in their behalf, introduce the evidence from the American State Papers, Duff Green's edition, vol. 4, page 289, so much of the proceedings of

(84) the board of that date, as follows, to wit:

"THURSDAY, *April 21st, 1825.*

"Board met pursuant to adjournment. * * * On motion permission was given by the board to the executors of the estate of Sarah Fish, deceased, to amend the memorials in the claims of said Sarah Fish."

290 Defendant further offered in evidence certified copy from the county court records of St. Johns County, the minutes of the court of the 27th of July, 1841.

Counsel offers this to show so much of the proceedings of said court as is contained in said certified copy, which has relations to the estate of said Sarah Fish, which is filed in evidence and marked Exhibit "1."

(Objected to by complainant's solicitor on the ground that the testimony offered is irrelevant and immaterial, and on the further ground that the master will take judicial notice that the paper referred to and purported to be an exemplification of the records of the probate or county court of St. Johns County, Florida, which is certified to by the clerk of the circuit court, that said clerk is not the proper custodian of the records of which said paper purports to be a copy.)

NOTE.—The ruling of this matter is reversed, the defendant's counsel being allowed time to cure objections, if he can.

Objections not having been cured, master rules testimony

(85) inadmissible. Exception noted.

Defendant further offers in evidence such portion of American State Papers, vol. 2, miscellaneous, Gales & Seaton's edition, so much

from the report submitted by the President of the United States to Congress with his message of January 28th, 1822, on page 876, paper #4, "Col. Butler to the gov. of St. Augustine."

Being so much of the letter of Col. Butler to the gov. of St. Augustine as reads as follows:

"I am induced to ask your excellency to embrace in the form of a project,

"First. Your wishes in regard to the manner and probable time of delivery of the provinces under your command.

291 "Second. The subject islands dependant on said province.

"Third. Public lots and squares.

"Fourth. Public edifices.

"Fifth. Fortification with their appendant defences.

"Sixth. Barrocks and other buildings which are not private property.

"Seventh. The archives and documents which relate directly to the property and sovereignty of said province, accompanied with a schedule of the property contained under the 2nd, 3rd, 4th, and 5th, & 6th heads.

(Signed) "ROBERT BUTLER.

"To Governor COPPINGER."

Complainants' counsel object to the foregoing on the ground that it is irrelevant and immaterial.

(86) Objection sustained; exception noted.

Defendant further offers in evidence so much of paper, from the same edition of American State Papers, same volume, #7, being found on page 877, entitled "Governor Coppinger to Colonel Robert Butler."

"ST. AUGUSTINE, *June 11th, 1821.*

"I have received your note of the 10th inst., in which you enclose me your appointment as commissioner to receive, in the name of the United States of America, the province under my charge. In respect to the lots, squares, public edifices, fortifications, barracks, and other public property, with the documents and archives that appertain directly to the right and sovereignty of this province, you can immediately designate the person or persons that are to receive the inventories, plans, &c., and to prepare and devise the needful, for the purpose of advancing this

292 operation, to the commandant of engineers of this city, for the delivery of each of the respective departments, and also the documents appertaining to individual property, and those alluding to the sovereignty of the province, for which I will give the competent order,

(87) when I am advised by you of those chosen for the purpose.

"To give you, as I wish, an exact account of the adjacent islands to this province is almost beyond my power, for the want of a general map that delineates their positions, extensions, and circumstances; but with the exception of Amelia, which is in the possession of the United States, and that forming the harbor of this port, known by the name of St. Augustine, on which is situated the look out house, all the rest are nearly without population, as likewise the public lands. You will therefore have a knowledge of those to be taken possession of as Government property, under the impression there may be of their not being granted. I believe want of exactitude will suffer no difficulties to arise, seeing the

good faith and long possession which the Spanish Government has had of them since the treaty concluded between her and Great Britain, at Versailles, the 19th September, 1783, in which no particular specification is made of said islands, nor is there any document relative to the affair, &c.

"JOSE COPPINGER.

"To Col. BUTLER,

"*Adj. Gen. Southern Dir., U. S. A., and Com., &c.*"

(88) Same objection. Objection overruled; exception noted.

Defendant further introduce' so much of paper ≠13, from the same book, found on page 881, entitled "Col. Butler to Gov. Coppinger.',

"ST. AUGUSTINE, *June 18th, 1821.*

"I have designated Major Cross as a fit and proper person to
293 receive the archives which relate to the sovereignty and individuality of the property of the province; and Lieutenant Baird, of the corps of artillery, to receive the inventories, plans, &c., and to take possession of the islands dependant, public lots and squares, public edifices and other buildings which are not private property, and have, therefore, to request that you will give the necessary orders, in good time, as you were pleased to signify in your note of the 11th inst., * * * &c.

"ROBERT BUTLER.

"To Governor COPPINGER."

(89) Same objection. Sustained; exception noted.

Defendant offers in evidence so much of paper ≠18, page 883, same book, entitled "Col. Butler to Lieutenant Baird, of the United States Army."

"ST. AUGUSTINE, *June 22nd, 1821.*

"I have selected you to receive from the proper authority at this place the inventories, plans, &c., which relate to the subject islands of this province, and all public lots and squares, public edifices and other buildings which are not private property. You will, therefore, wait on his excellency, Don Jose Coppinger, governor and Spanish commissioner, who will authorize an officer on his part to deliver them. You will pass a corresponding receipt therefor (retaining a copy), and hold the same subject to my order only.

"ROBERT BUTLER.

"To Lieut. T. J. BAIRD, U. S. Army."

Same objection. Sustained; exception noted.

Defendant further offered in evidence so much of paper ≠27, on page 887, in same book, same being so much of the letter of Col. Butler to Gov. Coppinger, as follows:

(90)

294 (91) "ST. AUGUSTINE, *July 3, 1821.*

"The following records are deemed indespensable to this object, viz: The royal or other orders authorizing the governors of this province to issue grants to individuals for lands, lots, or squares; the evidence or

indemnity offered by Great Britain to her subjects who might leave their property in this province and retire to her territory after cession to Spain; the proclamation of the Spanish authorities, calling on those individuals to come forward and dispose of their property or peacefully occupy it within certain periods or the same would be confiscated, and the order of confiscation thereafter; the original records of all grants made in the province either by His Catholic Majesty, the captain-general of Cuba, or the governors of this province, respectively; the original records of all trials and decisions embracing individual property; and the original relating to the execution of wills and administration of estates. The foregoing explanation is given you to show you what I am bound to consider as the archives relating to individual property and which are
(92) not to be removed from this place until the decision is had upon this subject by our respective Governments; and I request that you will cause the captain-general to be furnished with a copy of this communication. I have the honor to remain, with perfect respect and great consideration,

"ROBERT BUTLER.

"To His Excellency Governor COPPINGER."

Same objection. Sustained. Exception noted.

Defendant further offers in evidence so much of paper #30 of the same book, page 888, entitled "Governor Coppinger to Colonel Butler."

"ST. AUGUSTINE, *July 6th, 1821.*

295 * * * "You will be pleased to arrange for the coming forward to-morrow of the detachments that are to receive Matanzas and the Look-out House to get the necessary orders and pass to the occupancy of these said posts. * * *

"JOSE COPPINGER.

"By order of his excellency.

"GEO. I. F. CLARKE."

Same objection. Overruled. Exception noted.

Defendant further offers in evidence so much of paper #31 of
(93) the same book, page 889, entitled "Colonel Butler to Governor Coppinger."

"ST. AUGUSTINE, *July 8th, 1821.*

"* * * Lieutenant Wells has been ordered to receive the Look-out House and Lieutenant Davidson the works at Matanzas. They are required to present themselves to your excellency for this purpose.

"ROBERT BUTLER.

"To His Excellency JOSE COPPINGER."

Same objection. Overruled. Exception noted.

Defendant further offers in evidence so much of paper #9 of same book, page 895, entitled "Instructions to secretaries."

"ST. AUGUSTINE, *October 4, 1821.*

"GENTLEMEN: In pursuance of the authority vested in you by the letter of appointment from the acting governor of East Florida, bearing date of the 3d instant, you will proceed to the examination of the papers

and documents contained in the boxes deposited in the public storeroom.

The object of this examination is to separate those papers which
296 (94) clearly relate to property of individual citizens of this province, or of the late government thereof, from those which have no relation thereto, but are more properly of the late government exclusively. Under the former description of papers and documents it is deemed that the following are embraced, viz: The royal or other orders authorizing the governors of this province to issue grants to individuals for land, lots, and squares; the evidence of indemnity offered by Great Britain to her subjects who might leave their property in the province and retire to her territory after the cession of Spain; the proclamation of the Spanish authorities calling on all those individuals to come and dispose of their property or peaceably occupy it within certain periods or the same would be confiscated, and the order of confiscation thereafter; the original records of all grants made in the province, either by His Catholic Majesty, the captain-general of Cuba, *of* the governor of this province, respectively; the original records relating to all trials and decisions embracing individual property, and the original records
(95) relating to the execution of wills and administration of estates; the records of transfer of property by individuals, the archives of the royal treasury, and of the treasurer of the province; the archives relating to the property or rights of the corporate authority of St. Augustine; and, in general, all papers and documents which relate clearly to and may serve to elucidate the rights of individuals or of the late Government of Spain, and which are here omitted to be enumerated. You will make an inventory of all these papers, and will, in like manner, make an inventory of such papers as are not embraced within the scope of these instructions, which you will deposit in a separate box or boxes and mark the same. After having executed the commission with which you are charged, you will report the result of your proceedings to the commissioners.

"JOHN R. BELL.
"JAMES G. FORBES.
"EDMUND LAW.

297 "To Messrs. BETHUNE, LYNCH, and REYNOLDS, *secretaries, &c.*"

Same objection. Sustained. Exception noted.

(96) Defendants further offers in evidence from American State papers, Gale & Seaton's edition, volume 8, page 247, paper 1348, entitled, "Communication to the House of Representatives, December 16, 1835," and reads as follows:

"TREASURY DEPARTMENT, *December 9, 1835.*

"SIR: In compliance with a resolution of the House of Representatives, dated the 23rd February last, directing the Secretary of the Treasury to report to the House, at its next session, the number of Spanish claims to land in Florida now pending in the courts of that Territory under the act of Congress of 1828, the amount of land claimed, the nature of the claim, and by whom granted, with a schedule of those made by the same officers and for the same objects; of those confirmed by the Supreme Court of the United States, and whether the land covered by those titles are reserved from survey, or sufficiently designated to be laid down on the township plates.

"I have the honor to submit copies of letters from this Department, addressed to the Commissioner of the General Land Office, and to
(97) R. K. Call, esq., assistant counsel of the United States, employed under the authority of the act of the 23rd May, 1828, together with their respective reports upon the several heads of inquiry, and which contain all the information thereon in the possession of the Department.

"I have the honor to be, respectfully, your obedient servant,

"LEVI WOODBURY,

"*Secretary of the Treasury.*

298 "Hon. SPEAKER OF THE HOUSE OF REPRESENTATIVES."

Same objection. Sustained. Exception noted.

Defendants further introduced in evidence from the same book, same page, paper = 8, which reads as follows:

"TREASURY DEPARTMENT, *March 1, 1835.*

"SIR: As the assistant counsel for the United States in defence of claims arising under the act of 1828, I have herewith enclosed a resolution of the House of Representatives, date 23d ultimo, requiring this Department to report certain information in regard to the number, quantity, and character of the claims arising under that act, and
(98) have to request that you will prepare and submit to the Department, in time to enable it to comply with the resolution, a statement exhibiting the information required. In describing the character or nature of the claim you will report your opinion, whether it comes within the purview of those already decided or confirmed by the Supreme Court.

"I am, very respectfully, your obedient servant,

"LEVI WOODBURY,

"*Secretary of the Treasury.*

"R. K. CALL, esq., *Washington.*"

Same objection. Sustained. Exception noted.

Defendant further offers in evidence from the same book, page 249, paper = 4, which reads as follows:

"GENERAL LAND OFFICE, *October 25, 1834.*

"GENTLEMEN: It having been represented to this office that some of the land claims in your district which have been confirmed are not represented on the township plats, and the unconfirmed claims which were in due time and according to law presented to the officers
299 (99) authorized by law to receive the evidence in support of private claims and to decide thereon, being by law reserved from sale until the final decision of Congress, you are hereby required to withhold from entry all such tracts of land represented upon the township plats as public property, as you may be satisfied, either by an examination of the documents and records in your office, or by the evidence of credible persons, are included in the limits of any confirmed claims, or of any unconfirmed claim, the title of which was in due time and according to law filed with the commissioners or the register and receiver for the purpose of being investigated, marking the boundaries of such claims upon the township maps by pencil lines as accurately as practicable. At

the close of each month you will forward to this office an abstract of the lands reserved under this order, specifying the name of each claimant in each case, and giving the necessary reference to the claim as entered in the reports of the commissioners or of the register and receiver.

"I am, very respectfully,

"ELIJAH HAYWARD.

"REGISTER AND RECEIVER LAND OFFICE,
"*St. Augustine, Florida.*"

Same objection. Sustained. Exception noted.

(100) Defendant further offers in evidence from same book, page 251, paper = 4, so much of R. K. Call's report to the Hon. Levi Woodbury, Sec. of the Treas., which reads as follows:

"For although the concessions for this purpose commenced as early as the year 1793, yet not a single instance is to be found in which one of them was confirmed by the Spanish authorities and the land conveyed in fee simple to the grantees. In support of this fact I beg leave to refer you to the report of the register and receiver, acting as land commissioners, on mill grants hereunto annexed, marked 'C,' and the testimony of Antonio Alvarez, keeper of the public archives,
300 marked 'D.' Mr. Avarez has been employed in one of the offices of the archives of the province since the year 1807, has an intimate knowledge of the documents and usage and custom of the Government, and for his general intelligence on the subject of the land titles of the country he has been frequently examined as a witness by both parties in the cases now depending in the court.

"The quantity of land claimed under these several mill grants
(101) amounts in the aggregate to three hundred and twelve thousand six hundred acres, while the whole amount confirmed to grantees for habitation and cultivation, the paramount object of the laws and ordinances of Spain, from the 29th day of October, 1790, until the year 1821, was only one hundred and seventy-nine thousand nine hundred and twenty-seven and a half acres, as will fully appear from the document marked 'A,' herewith exhibited, and to which I beg leave to call your attention. It is signed by the keeper of the public archives, and presents an abstract of all the real or royal titles given by the Spanish Government under the royal order of 1790.

"The quantity of land contained in each of these grants will be found worthy of consideration.

"It will go far to prove the conformity of the usage & custom of the province, with the laws of the Indies, and the royal order of 1790, which authorized the granting of lands to individuals in proportion to their ability to cultivate and improve them, and on the condition of habitation and cultivation. Until the year 1816 the largest grant ever confirmed by the Spanish authorities to any individual for
(102) any purpose was for three thousand two hundred and seventy-five acres, as will fully appear from the two documents marked 'A' and
301 'B,' containing a list of all the confirmed grants, and from the testimony of Antonio Alvarez, taken in the case of Benjamin Charis. In answer to the third interrogatory, he says: 'The largest quantity of land confirmed by a royal (real) title, previous to the year

1816, was to John McQueen, a copy of which is hereunto annexed.' This grant will be found in the document marked 'D,' and contains the quantity before mentioned of three thousand two hundred and seventy-five acres. (Page 252.) * * *

" * * * The laws of the Indies, the royal orders of 1790 and 1815, and the local regulations predicated on those authorities, remain in full force, unchanged, and unrepealed, as is fully shown by the testimony of Antonio Alvarez, taken in open court, in the case of Villalobus and Fergues, and where the witness was asked, 'Are you acquainted with all the royal titles granted by the Spanish governors of this province for land to individuals?' and answered 'All the royal titles exist in my office.
I am acquainted with them in that way. I know they are all in
(103) my office.' 'Were not all the royal titles granted under the royal order of 1790 and 1815?' To this he answered, 'Yes.'

"'Were not the regulations of Governor White in force in this province from their publication in 1803 until the transfer of this province to the United States?' To this he answered, 'Yes.' Again, in the case of John W. Low, the same witness was asked, in the second interrogatory, to state particularly whether all the grants or concession of land in East Florida, made since 1790, were not made under either one or the other of the royal orders of 1790 and 1815, and if not, under what royal order they were made? To this interrogatory the witness answered, 'I believe that all the grants of land made in East Florida since 1790 are founded upon the royal order communicated to the Government on the 29th day of October, 1790, and the royal order of the 29th of March, 1815.'
302 "The first of the royal orders will be found in Clark's Land Laws, page 996, and the second on page 1009–10. The regulations of Governor White, to which the last refers, and on which it is based, will be found on page 1001 of the Land Laws. That these
(104) royal orders were in force, and that they constituted the only rule for making grants in the province, is abundantly shown by Governor Coppinger himself, even in the very acts by which he violated them; for in every title confirmed by him, from the commencement to the close of his administration, without one single exception, he writes one or the other of these royal orders, and refers to it as his authority for making the grant.

* * * * * * *

"R. K. CALL."

Objected to as irrelevant and immaterial.

Sustained. Exception noted.

Also the following is offered in evidence by the defendant from same book, page 254, under the head "Report on the cases contained in Abstract ≠ 2," as follows:

"For the practice of the Spanish Government, in granting and preserving the evidence of titles to land in East Florida, I beg leave to refer you to the testimony of Antonio Alvarez, taken in the case of Elizabeth Wiggins, hereunto annexed, marked 'D,' and an extract from the report of the register and receiver, acting as commissioners, marked 'E.' These two documents, and the authorities to which they respectively refer, will give a comprehensive view of the laws and ordi-
(105) nances of Spain, and the practice under them, in making grants of land in East Fla.

"Alvarez states that all the original concessions made by the governors were deposited in the office of the secretary, whose duty it was at the time of making the concession to furnish a certified copy for the grantee.
303 "* * * That the original royal or real title were signed by the governor, and deposited in the office of the escribano or notary of government, who, in like manner, furnished the grantee with a certified copy of his grant. Now, it is worthy of remark that not a single instance has occur'ed in the investigation of the land claims of the country, where a claimant has presented a copy of a grant certified by the escribano, in which the original grant was not found on examination of the public archives. * * * The remarkable difference in the quantity of land contained in the real titles given by Gov. White and that contained in the certified copies of concessions said to have been made by him is worthy of consideration, and goes far to sustain the belief that there never were any originals in these cases. Document marked 'A' contains all
(106) the confirmed grants on royal titles given by Governor White, and they prove most conclusively the consistency of his practice with the regulation prescribed by him and found at page 1001 of the land laws. There is more than ten times the quantity of land contained in a single one of these copies of concessions for which no original can be found than was granted in full property by Governor White during fifteen years of his administration of the government of East Florida. It does not appear that he even confirmed to anyone on any other consideration than that of habitation and cultivation."

Objected to as irrelevant & immaterial. Sustained. Exception noted.

Defendant further introduced from same book, pages 261–2–3–4 of Exhibit "A," as follows: Alphabetical list of real titles or patents to land issued by the governor of East Florida by virtue of the royal order of 1790.

304 [Numerals used instead of name of month.]

Grantees.	Quantity.	Date.	Grantors.
Andrew, John	390	7-10-1804	Governor White.
Do	161	7-10-1804	Do.
Andrew, Robert	500	4- 6-1809	Do.
Arredondo, Jos. M	900	6-20-1815	Governor Estrada.
Ashton, Edward	245	1-18-1816	Governor Coppinger.
Atkinson, George	550	2-22-1816	Do.
Addison, John	1,414	6- 8-1816	Do.
Andrew, Antonio	150	2-12-1817	Do.
Arredondo, F. M., sr	1,000	11-15-1817	Do.
Atkinson, Andrew	200	11-17-1817	Do.
107 Arredondo, F. M., jr	7	7-23-1818	Do.
Acosta, Catalina	lot	3- 9-1819	Do.
Andrew, John	400	4- 7-1820	Do.
Acosta, Miguel	100		
Brenan, Patrick	lot	11-10-1791	Governor Quesada.
Bowden, Isaac	200	12-15-1791	Do.
Bowden, Isaac, jr	208	12-20-1791	Do.
Bowden, Isaac, jr., heirs of	208	3-13-1806	Governor White.
Bonsquet, John J	12½	7-15-1809	Do.
Bethune, Farquhar	1,110	3- 4-1814	Governor Kendelan.
Bouden, Uriah	200	4-17-1815	Do.
Betts, Samuel	1,800	7- 3-1815	Governor Estrada.
Do	2,000	7- 3-1815	Do.
Broward, Francis, heirs of	300	2-13-1816	Governor Coppinger.
Bachelot, John	300	6-10-1816	Do.
Do	do	do	Do.
305 Berrie, William	350	2-12-1817	Gov. Coppinger.
Bagley, Francis, heirs of	300	12-24-1817	Do.
Burgo, Joseph Peso de	366	2-28-1818	Do.
Do	1,000	do	Do.

[Numerals used instead of name of month.]

Grantees.	Quantity.	Date.	Grantors.
Bunch, John	1,168	4-24-1819	Gov. Coppinger.
Burgevin, Andrew	490	....do	Do.
Do	500	....do	Do.
Clarke, Angus	450	12-10-1791	Gov. Quesada.
Capella, Lorenzo	120	4-10-1804	Gov. White.
Cowin, Robert	150	6-6-1804	Do.
Capo, John	200	9-7-1804	Do.
Carter, Isaac	350	6-4-1806	Do.
(108) Christopher, Spicer	500	4-8-1809	Do.
Do	358	....do	Do.
Do	92	4-12-1809	Do.
Do	100	....do	Do.
Do	500	4-10-1809	Do.
Cashen, James	700	6-11-1814	Gov. Kendelan.
Craig, William	450	3-20-1815	Do.
Do	250	....do	Do.
Cowen, Robert	208	5-24-1815	Do.
Castro, Bartholomew de	300	7-4-1815	Gov. Estrada.
Do	1,000	1-15-1815	Do.
Do	400	....do	Do.
Cocifacio, Pedro	2,000	10-12-1815	Do.
Do	....do	....do	Do.
Do	400	....do	Do.
Crosby, Michael	800	3-8-1816	Do.
Carney, William	250	4-4-1816	Gov. Coppinger.
306 Clarke, George	5 mi. sq.	4-6-1816	Do.
Castro, Batholomew de	35	4-10-1817	Do.
Do	2,000	2-28-1818	Do.
Crosby, Michael	500	3-2-1818	Do.
Do	2,000	....do	Do.
Castro, Batholomew de	1,500	5-14-1818	Do.
Carreras, Diego	16	6-19-1818	Do.
Castro, Batholomew de	200	7-6-1818	Do.
Carney, William	700	8-26-1818	Do.
Clarke, George	1,000	8-27-1818	Do.
Caballero, Antonio, heirs of	69	4-17-1819	Do.
(109) Cantal, Catalina	Lot.	6-12-1819	Do.
Canobas, Antonio	210	7-9-1819	Do.
Clarke, George	100	8-5-1819	Do.
Christopher, Spicer, heirs of	600	11-6-1819	Do.
Do	Island.	....do	Do.
Chasen, James	500	2-12-1821	Do.
Chapuz, Miguel	200	4-9-1821	Do.
Dewes, Andrew, heirs of	2,700	5-4-1804	Gov. White.
Dupon, Paul	3,000	5-14-1816	Gov. Coppinger.
Do	....do	4-26-1819	Do.
Dean, Patrick, heirs of	995	6-4-1819	Do.
Espinosa, Josefa, heirs of	126	1-25-1811	Gov. White.
Do	150	....do	Do.
Estacholy, Francis	50	3-15-1817	Gov. Coppinger.
Espinosa, Sebastian	500	3-31-1818	Do.
Fergusen, A. E	1,150	12-15-1791	Gov. Quesada.
Forreater, Gerald	500	12-29-1791	Do.
Fernandez, Domingo	150	8-19-1807	Gov. White.
307 Ferguson, A. E., heirs of	1,150	10-5-1811	Gov. Estrada.
Do	507	....do	Do.
Do	43	10-7-1811	Do.
Fernandez, Domingo	100	9-1-1813	Gov. Kendelan.
Fenwick, Joseph	600	4-16-1814	Do.
Ferrera, John B	375	9-28-1815	Gov. Estrada.
Fleming, George	1,000	3-8-1816	Gov. Coppinger.
Fernandez, Joseph	100	6-19-1816	Do.
Fernandez, Domingo	300	4-11-1817	Do.
Fuentes, Ramon de	235	1-15-1818	Do.
Fermenias, Josefa	6	8-14-1818	Do.
(111) Fish, Jesse, heirs of	500	4-24-1819	Do.
Falany, Ferdinand	Lot.	4-30-1819	Do.
Do	1,200	....do	Do.
Garvin, David	60	12-5-1814	Gov. Kendelan.
Gilbert, Robert	250	4-17-1815	Do.
Geiger, John	600	7-29-1817	Gov. Coppinger.
Gandry, John B	3,000	5-14-1818	Do.
Gonzales, John	1,000	6-19-1818	Do.
Gizorme, John P	1,000	11-3-1818	Do.
Gormes, Nicholas, as heirs of	1,200	11-5-1818	Do.
Guardarrama, M., heirs of	3,000	2-16-1819	Do.
Gianopoly, John	600	12-23-1819	Do.
Do	35	5-11-1821	Do.
Hollingsworth, Timothy	900	3-9-1805	Gov. White.
Hendricks, William, heirs of	300	4-10-1806	Do.
Harrison, Samuel	501	11-12-1807	Do.
Hull, Ambrose	1,000	5-8-1811	Gov. Estrada.
Hart, William	350	10-4-1811	Do.

[Numerals used instead of name of month.]

	Grantees.	Quantity.	Date.	Grantors.
308	Hogans, Reuben	385	10-14-1811	Gov. Estrada.
	Hull, Ambrose	2,600	2- 2-1812	Do.
	Huertas, Antonio	800	10-26-1813	Gov. Kendelan.
	Hogans, Reuben	300	5-26-1815	Do.
	Do	450	.....do	Do.
	Hernandez, Martin	20	10- 5-1815	Gov. Estrada.
	Do	10¼	1-18-1815	Do.
	Hall, James	200	1-18-1815	Gov. Coppinger.
	Huertas, Antonio	10,000	7-20-1816	Do.
	Hutcherson, Robert	300	7-31-1816	Do.
	Hendricks, Isaac	350	9-28-1816	Do.
(112)	Hogans	350	4-17-1817	Do.
	Huertas, John	15,000	12-24-1817	Do.
	Hogans, Charles	200	1-12-1818	Do.
	Hughes, Joseph	10	1-16-1818	Do.
	Houston, John	270	2-17-1818	Do.
	Do	155	.....do	Do.
	Do	160	.....do	Do.
	Do	120	.....do	Do.
	Hogans, Reuben	200	3-27-1818	Do.
	Hernandez, Jos. M	Marsh.	4- 8-1818	Do.
	Hendricks, Isaac	216	5- 8-1818	Do.
	Higginbottom, Burrows	500	4-16-1819	Do.
	Do	200	.....do	Do.
	Hill, Ana Maria	100	5-12-1819	Do.
	Hinsman, Anthony	240	9- 1-1819	Do.
	Harrel, Moses	395	5- 8-1821	Do.
	Jordine, William, heirs of	300	7- 8-1807	Gov. White.
	Do	100	7- 8-1810	Do.
309	Kane, William, heirs of	300	8-19-1809	Gov. White.
	Kingsley, Zephaniah	2,000	1- 7-1815	Gov. Kendelan.
	Do	1,000	12-22-1815	Gov. Estrada.
	Do	2,000	1-18-1816	Gov. Coppinger.
	Do	300	.... do	Do.
	Kerr, Jones	1,800	2- 5-1816	Do.
	Lowe, John	750	1-30-1812	Gov. Estrada.
	Laurence, William	300	4-25-1815	Gov. Kendelan.
	Linch, Patrick	1,100	4-26-1819	Gov. Coppinger.
	Leonardy, Roque, heirs of	600	5-25-1821	Do.
	Do	1,400	.... do	Do.
(113)	McQueen, John	3,275	2-27-1814	Gov. White.
	Do	2,266	.....do	Do.
	Do	720	.... do	Do.
	Do	2,630	3- 2-1804	Do.
	Do	126	2- 4-1804	Do.
	Do	104	3-12-1804	Do.
	Mestre, Peter	275	5-16-1804	Do.
	Maxey, Robert C	1,000	6- 6-1804	Do.
	Moore, John C	350	11- 9-1805	Do.
	Mattair, Maria, heirs of	200	4-25-1807	Do.
	Meers, Samuel, heirs of	200	10-17-1811	Gov. Estrada.
	McClure, John	621	6-26-1813	Gov. Kendelan.
	McHardy, Robert	1,000	7- 3-1815	Gov. Estrada.
	Do	.....do	.... do	Do.
	Montesdoca, John G	400	6-19-1818	Gov. Coppinger.
	Moore, Hannah, heirs of	850	7- 8-1818	Do.
	Mattair, Lewis	700	11- 4-1818	Do.
	Mills, William, heirs of	150	7- 9-1819	Do.
	Mattair, Lewis	245	2- 4-1820	Do.
310	Mambrumaty, A., heirs of	150	4-24-1820	Do.
	Mestre, John	50	4- 3-1821	Do.
	Do	.....do	.....do	Do.
	Maxey, Robert C., heirs of	500	5-18-1821	Do.
	Nobles, Hannah	100	3-26-1819	Do.
	O'Neil, Margaret, heirs of	307	3-12-1807	Gov. White.
	Do	243	3-13-1807	Do.
	Ortega, Lazaro	107	9- 5-1807	Do.
	O'Neille, Margaret, heirs of	300	6-15-1810	Do.
(114)	Ormand, James, heirs of	2,000	4-18-1816	Gov. Coppinger.
	Ortega, Lazaro	88	6-25-1819	Do.
	Do	450	4- 9-1821	Do.
	Plummer, Daniel	300	12-10-1791	Gov. Quesada.
	Pacety, Andrew	166	4-23-1804	Gov. White.
	Papfy, Gaspy	5½	1- 9-1805	Do.
	Pons, Mathias	6	4- 9-1813	Gov. Kendalen.
	Do	400	9-17-1814	Do.
	Pellicer, Francis	1,100	3-30-1815	Do.
	Perpall, G. W	150	5-23-1815	Do.
	Do	1,900	5-24-1815	Do.
	Do	450	.....do	Do.
	Do	535	.....do	Do.

[Numerals used instead of name of month.]

	Grantees.	Quantity.	Date.	Grantors.
	Pacety, Andrew	200	10-16-1815	Gov. Estrada.
	Parpall, G. W	1	1-15-1815	Gov. Coppinger.
	Plummer, Daniel, heirs of	300	12-23-1819	Do.
	Rodriguez, Lorenzo	100	1- 9-1805	Gov. White.
	Richard, Francis	230	3-20-1815	Gov. Kendelan.
	Do	446	.....do	Do.
311	Romero, Manuel, heirs of	100	3-17-1817	Gov. Coppinger.
	Reyes, Francesco	1,000	5-13-1817	Do.
	Richard, Francesco	110	1-27-1818	Do.
	Sanders, John	1,200	12-10-1791	Gov. Quesada.
	Solana, Manuel	100	.....do	Do.
	Sanchez, F. X	1,274	12-29-1791	Do.
	Suarez, Antonio	500	7-27-1809	Gov. White.
	Sanchez, F. X., heirs of	1,130	1-29-1811	Do.
	Do	144	1-30-1811	Do.
	Do	300	2- 4-1811	Do.
(115)	Do	100	2- 6-1811	Do.
	Do	600	2- 9-1811	Do.
	Do	400	.....do	Do.
	Do	255	2-11-1811	Do.
	Do	600	2-12-1811	Do.
	Do	121	.....do	Do.
	Suarez, Bartholomew	9	8-31-1812	Gov. Kendelan.
	Segui, Bernardo, heirs of	1,200	7-20-1816	Gov. Coppinger.
	Sanchez, Joseph, heirs of	12	6-10-1818	Do.
	Do	20	.....do	Do.
	Smith, Ulrich	50	7-22-1818	Do.
	Sanchez, Nicholas, heirs of	300	4- 2-1819	Do.
	Smith, Josiah	1,000	4-24-1820	Do.
	Solano, Manuel	100	12-14-1820	Do.
	Sanchez, F. X., heirs of	1,000	6- 5-1821	Do.
	Do	100	.....do	Do.
	Travers, Thomas, heirs of	171	9-27-1808	Gov. White.
	Do	1,000	.....do	Do.
	Do	125	9-28-1808	Do.
312	Tharp, John, heirs of	350	2-23-1809	Gov. White.
	Do	450	.....do	Do.
	Tod, Lindsay	600	7- 1-1815	Gov. Estrada.
	Tate, John E	600	5- 4-1818	Gov. Coppinger.
	Travers, Thomas, heirs of	3,000	2-15-1819	Do.
	Do	1,000	7- 9-1819	Do.
	Travers, Isaac	115	6-18-1819	Do.
	Underwood, Jehu	600	2-17-1821	Do.
	Vaughn, John D	250	6-18-1821	Do.
	Walker, William	175	2-16-1816	Do.
(116)	Waterman, Eleazer	175	2-22-1816	Do.
	Do	200	.....do	Do.
	Wickes, Isaac	800	11-19-1817	Do.
	Do	200	3-31-1818	Do.
	Do	1,100	.....do	Do.
	Williams, Samuel, heirs of	3,200	4-18-1817	Do.
	Wanton, Edward	400	4-26-1820	Do.
	Yonge, Henry	850	3- 5-1814	Gov. Kendelan.
	Yonge, Philip R	2,000	1-26-1816	Gov. Coppinger.

St. Augustine, October 22, 1832.

ANTONIO ALVAREZ, *K. P. A.*

Same objection. Sustained. Exception noted.

Defendant also offered in evidence from the same book, page 265, all of B, as follows: Alphabetical list of real titles or patents to land issued by the governors of East Florida by virtue of the royal order 1815.

313	Grantees.	Quantity.	Date.	Grantors.
	Andrew, Minguel, and Andrew, Joseph	100	12-20-1815	Gov. Estrada.
	Arredondo, F. M., jr	4,500	3- 7-1816	Gov. Coppinger.
	Do	1,000	.....do	Do.
	Atkinson, George	1,000	3- 8-1816	Do.
	Atkinson, Andrew	450	4- 5-1816	Do.
	Alvarez, Joseph	355	9- 9-1816	Do.
	Acosta, Domingo	695	3-20-1817	Do.

	Grantees.	Quantity.	Date.	Grantors.
	Arredondo, Joseph M	20,000	3-20-1817	Gov. Coppinger.
	Andrew, Raphael	210	6- 2-1817	Do.
	Aguilar, Thomas	600	6- 4-1817	Do.
	Atkinson, John	2,000	2- 7 1817	Do.
(117)	Alvarez, Antonio	1,500	12- 1-1817	Do.
	Aguilar, Thomas	2,000	.....do	Do.
	Arredondo, F. M., sr	2,700	12-13-1817	Do.
	Alvarez, Geronimo	500	1-12-1818	Do.
	Arnau, Stephen	200	6-19-1818	Do.
	Do	100	.....do	Do.
	Andrew, John	300	9-16-1818	Do.
	Arredondo, F. M., sr	15,000	8- 9-1819	Do.
	Do	14,500	.....do	Do.
	Do	500	.....do	Do.
	Do	38,000	7-31-1820	Do.
	Arredondo, F. M., sr	4,000	8- 9-1820	Do.
	Do	1,500	.....do	Do.
	Do	500	.....do	Do.
	Do	4,000	.....do	Do.
	Barbee, Francis	500	4-10-1817	Do.
314	Bethune, Farquhar	425	4-22-1818	Do.
	Borgo, Pedro Pesodo	400	4-16-1818	Do.
	Backhouse, Thomas	500	6-20-1818	Do.
	Cashen, James	1,050	2-23-1816	Do.
	Clarke, Charles	300	4-10-1817	Do.
	Clarke, George	22,000	12-17-1817	Do.
	Cala, Pedro re de	500	1-27-1818	Do.
	Canobas, Antonio	500	4- 7-1818	Do.
	Clarke, George	4,000	5- 4-1818	Do.
	Estacholy, Domingo	220	12- 5-1816	Do.
	Entralgo, John de	2,000	11-15-1817	Do.
	Do	1,000	.....do	Do.
	Do	800	.....do	Do.
(118)	Entralgo, John de	1,000	5- 5-1821	Do.
	Fontane, Joseph	495	4- 4-1816	Do.
	Fleming, George	980	5- 5-1816	Do.
	Do	20,000	9-24-1816	Do.
	Fernandez, Domingo	1,150	4-10-1817	Do.
	Do	228	.....do	Do.
	Fontane, Pablo	800	11-15-1817	Do.
	Fatio, Francis P	1,000	4-18-1818	Do.
	Groves, Henry	230	3-18-1817	Do.
	Garvin, William	200	4-29-1817	Do.
	Garcia, Joseph	100	12- 5-1817	Do.
	Gomez, Eusebio	425	5- 6-1818	Do.
	Gue, Francis	500	6-12-1818	Do.
	Do	500	.....do	Do.
315	Giraldo, Antonio	600	9- 7-1818	Do.
	Gray, Josiah	51	2- 8-1819	Do.
	Do	95	.....do	Do.
	Do	104	2- 9-1819	Do.
	Harrison, Samuel	1,180	5-10-1816	Do.
	Hernandez, Joseph M	1,435	5-28-1816	Do.
	Hobkirk, William	350	9-24-1816	Do.
	Do	325	.....do	Do.
	Hernandez, Joseph M	455	4-23-1817	Do.
	Higinelos, Catharina J	2,980	12- 7-1817	Do.
	Harvey, William	200	6- 9-1818	Do.
	Hernandez, Joseph M	645	12- 6-1818	Do.
	Do	10,000	5- 9-1821	Do.
	Do	.....do	.....do	Do.
(119)	Huertas, Antonio	2,500	4-10-1821	Do.
	Do	1,500	.....do	Do.
	Do	600	.....do	Do.
	Do	10,400	.....do	Do.
	Hernandez, Martin	1,400	6-25-1821	Do.
	Do	500	.....do	Do.
	Do	.....do	.....do	Do.
	Lozano, Francis	500	1-28-1818	Do.
	Llorente, Thomas	2,000	6-20-1818	Do.
	Leonardy, John	160	8- 3-1818	Do.
	Medicis, Francis	245	2-15-1816	Do.
	Mier, Antonio	275	2-16-1816	Do.
	Miranda, Peter	790	7-17-1816	Do.
	Montealesca, John G	780	9- 3-1816	Do.
	Miranda, Peter	100	11-28-1816	Do.
316	Marin, Francis	340	6-20-1817	Do.
	Miranda, Peter	2,000	12-12-1817	Do.
	Mantinez, Mathias	1,000	1-24-1818	Do.
	Do	.....do	1-26-1818	Do.
	Matinely, James	300	4-16-1818	Do.
	Mattair, Lewis	500	1- 3-1821	Do.

	Grantees.	Quantity.	Date.	Grantors.
	Miranda, Peter	4,000	4-11-1821	Gov. Coppinger.
	Do	3,400	....do	Do.
	Do	2,000	....do	Do.
	Do	600	....do	Do.
	Perpall, G. W	1,340	2- 3-1816	Do.
	Proctor, Antonio	185	3- 8-1816	Do.
	Price,	175	3- 9-1816	Do.
	Perpall, G. W	1,340	2-22-1817	Do.
(120)	Pons, Peter	875	6- 4-1817	Do.
	Perpall, G. W	600	1-12-1818	Do.
	Do	780	6-19-1818	Do.
	Pellicer, Francis	2,000	7-22-1818	Do.
	Pons, Antonio, heirs of	175	5-27-1818	Do.
	Rafo, John	345	5-28-1816	Do.
	Rosete, Pablo	2,000	4-17-1818	Do.
	Rodriguez, Santos	2,000	8-10-1818	Do.
	Reyes, Joseph B	1,000	6-20-1818	Do.
	Rivera, Francis	1,000	10-31-1818	Do.
	Reyes, Domingo	2,000	5- 5-1821	Do.
	Sabiches, Ramon	200	4-19-1816	Do.
	Sanches, Nicholas	385	4-24-1816	Do.
	Solana, Philip	245	5- 6-1816	Do.
	Sanches, Joseph S	380	6-26-1816	Do.
317	Seton, Charles	600	9-13-1816	Do.
	Sabate, Pablo	2,500	4- 2-1818	Do.
	Sanches, F. P	1,000	4- 3-1818	Do.
	Sanches, Joseph, heirs of	405	4-16-1818	Do.
	Sanches, Joaquin	500	6-15-1818	Do.
	Do	....do	....do	Do.
	Segui, Bernardo	1,200	8- 3-1818	Do.
	Suarez, Barthel	50	8- 4-1818	Do.
	Solana, Lorenzo	1,000	5-27-1819	Do.
	Sanchez, John	500	7-29-1820	Do.
	Travers, Jery	125	6-19-1816	Do.
	Taylor, Turnell, heirs of	200	9-13-1816	Do.
	Todd, Lindsay	390	2-11-1817	Do.
	Travers, William	1,000	9- 7-1818	Do.
(121)	Do	....do	11- 6-1818	Do.
	Triay, Antonio	1,500	4- 9-1821	Do.
	Ugarte, Joseph M	450	2- 5-1818	Do.
	Do	350	2- 5-1818	Do.
	Wickes, Bernard, heirs of	200	6-10-1818	Do.
	Weadermany, Philip	150	7- 3-1819	Do.
	Yonge, Henry	980	12-22-1815	Gov. Estrada.
	Yonge, Philip R	25,000	2-22-1817	Gov. Coppinger.

St. Augustine, October 22, 1832.

ANTONIO ALVAREZ, *K. P. A.*

Same objection. Sustained. Exception noted.

Defendant further offers from the same book, same volume, page 271, so much of the paper entitled "Superior court, East Florida, July term, 1833."

318 ELIZABETH WIGGINS } Land claim, 300 acres.
vs.
THE UNITED STATES. }

Antonio Alvarez, keeper of the public archives, sworn as a witness in open court on behalf of the said claimant, states:

That his age is forty-two years, and was born in this city, and that he has constantly resided here and has sometimes been abroad, but considered this his place of residence; was absent at one time for
(122) eighteen months. Witness states that he was employed as a clerk in the Government secretary's office here during the Spanish Government, from the year 1807 till the year 1821, during which time he was absent twice, once in 1809 and '10, and at another time in 1814 and '15. Witness states that the Government secretary's office was kept

1807, '8, and '9 by one Juan de Pierra, and after that time by Thomas de Aguilar, who continued at the head of that office till the cession of this country to the United States. Witness states that persons wishing grants of land from the Spanish Government presented a memorial to the governor, and he decreed on the memorial, and that decree of the governor was filed in the office of the Government secretary, and constantly retained there. Witness states that when the decree of the governor ordered a royal title to be issued, the decree was transferred to the escribano's office, but when the decree did not order a royal title to be issued, the decree remained in the Government secretary's office; and in either case the grant remained in the possession of the Government. Witness states that the evidence to the grantee on the making of the
(123) grant was a certified copy of the decree, or of the memorial and decree, by the Government secretary. Witness states that to obtain a royal title a second memorial and decree was necessary, which went
319 into the escribano's office, in which office royal titles were made. Witness states that it was one of the ordinary duties of the Government secretary to make certified copies of the memorials and decrees, which copies were made for the use of the parties. Witness states that it was generally the case that the decree of the governor directed a copy of the decree and memorial to be made for the use of the party. It was not always the case, but it was generally done after Governor White's time. Witness states that according to the usage and practice of the Spanish Government, copies made by the Government secretary and certified by him would be rec'ived as evidence of title in the Spanish courts of justice. In speaking of these copies witness has reference to copies made in the Government secretary's office, which are not called duplicates, but copies. Witness states that these certified copies of the memorials and decrees were made immediately on the making of the grant, and delivered to the party when he called for them.

(124) Witness states that it was not the practice of the Government secretary to annex seals to his certificates; the escribano always affixed a seal to his certificates, which was made with a pen; and the secretary of the Government had no such seal to his certificate.

* * * * * * *

Examined by the United States:

Witness states that he does not recollect of a certified copy of a grant being received in evidence in a Spanish court of justice where the original was not on file in the proper office; and from his knowledge of the practice of the Government, he does not believe that such copy would be received in evidence in a Spanish court unless the party could prove that the original was in office at the time the copy was made * * * (page 272).

320 Examined by the United States attorney:

Witness states that where there was no original grant to be found a certified copy would not be received in evidence unless the loss of the original was proven or accounted for. * * *

(Page 273). Witness states that when a party got a decree for a
(125) royal title he carried it to the escribano, and the escribano drew out the royal title in a book and the governor signed it, and that

was the original. Witness states that the memorial of the party praying for a royal title, together with the certificate of the concession given by the secretary of the Government, the survey and plat of the land, and the original proof, having complied with the conditions of the concession and the original decree ordering a title or patent to be issued in favor of the grantee, was called the expediente, which expediente remained on file in the office of the escribano. Witness states that the escribano had no separate books in which he noted the royal titles; they were issued from those in which they were contained. At every ten sheets of paper on the small books, which he first made, there was a blank sheet left, on which the escribano made an index of the grants that proceeded that sheet, and when he had enough of these sheets or small books, they were bound into large books, and these indexes were taken out and a general index made of the whole book. Witness states that there was no book in the secretary of the Government's office in which a note was made of
(126) the concessions that issued; they were merely filed away in his office on the loose sheets on which they were made, and were filed away in bundles alphabetically, and without any list.

Examined by United States attorneys:

Witness states that where concession' were made under royal order of 1790, the governor generally required proof of the compliance of
321 the conditions before he gave a royal title. Witness states that he thinks it was considered that a person had no right to obtain a royal title, though he had a claim to the land, till he had complied with the conditions unless the party could show that he could not comply with the conditions of his grant from the disturbance in the country, Indian wars, or something of the kind. It was generally considered that a person had to comply with the conditions of his grant before he could obtain a royal title.

Question. Was not the legal estates or title to the land conveyed to the claimant by the royal title issued from the office of the escribano?

Answer. Yes.

Question. Was there any other made by which the title from the King was conveyed in full property by the governors of this province
(127) to the claimants of land?

Answer. No other made, except in some cases I have alluded to before, where the governor has given the party permission to sell his land. * * *

(Page 274.) Question. Where a party failed to comply with the conditions of his concession, could not the Government grant the land to another individual, and, if the royal title were given to the last individual, would not the claim of the first person who had failed to comply with the conditions be entirely defeated?

Answer. Certainly. * * *

Question. In all cases of concession, such as the one you have just examined wherein no conditions were specified, was it not always understood that the ordinary conditions of habitation and cultivation were implied and annexed to said concessions?

Answer. Yes. * * *

Question. In all cases of concession under royal order of 1790 wherein no time was mentioned within which the party should take possession of

the land and no condition was mentioned, was not the party
(128) required to prove habitation and cultivation of said land before he could obtain a title in full property of said land?

322 Answer. Yes, generally that was the case.

Question. When a part' settled on land under a concession, and he habitated and cultivated it during the period of law and the regulation required to entitle him to a royal title, would not the governor give a royal title for a larger quantity of land than that mentioned in the concession if the party proved that from the number of slaves and family he would be entitled to a greater quantity?

Answer. I don't recollect a case of that description, but I believe he would be allowed a larger quantity.

Question. When a party applied to the governor for a royal title under the royal order of 1790, was he not required to prove the number of his family and slaves, as well as his habitation and cultivation, before the royal title was given; and was not the quantity of land granted by the royal title in proportion to the number of his slaves and family?

(129) Answer. I don't recollect of an instance where a party had to prove the number of his family at the time of petitioning for a royal title. The number of acres in the royal title was generally the same as contained in the concession.

Question. At what time did he prove the number of his family and slaves?

Answer. I can not not say positively; sometimes the party at the time he applied for the concession presented a list of his family and slaves; at other times the number of his family and slaves was mentioned in his memorial; sometimes they were not mentioned in the memorial, and sometimes the party petitioned the governor for a quantity of land corresponding to his family.

323 Examined by claimant:

Question. How do you know that there was a condition implied that the grantee should take possession and cultivate in concessions like the one before the court, though no such condition was expressed?

Answer. I know it by the general practice and by seeing, when they applied for royal titles, that they had to prove compliance with the usual conditions established by the Government. * * *

(Page 275.) Answer. I have never seen it proved when the party took possession; he proved that he had been in possession and cultivation ten years.

(130) The foregoing testimony introduced by the defendant is objected to by the complainants on the ground that it is irrelevant and immaterial, and that complainants are not bound by testimony of witness given in a case to which they were not parties.

Sustained. Exception noted.

Defendant offered in evidence from same book and volume, page 275, as follows, the question of the United States attorney to Antonio Alvarez, witness in the case of Benjamin Chaires et al., to wit: "Please examine your office and ascertain to whom the largest quantity of land was confirmed by a royal title in said province previous to the year 1816; state to whom said royal title was made and annex a copy thereof to your answer in this interrogatory."

In answer to this interrogatory, witness answered and said:

"The largest quantity of land confirmed by royal (real) title, previous to the year 1816, was to John McQueen, a copy of which is hereto annexed."

Objected to by complainants on the same ground as above stated.

Sustained. Exception noted.

324 (131) Defendant further offered in evidence from same book, 280, as follows:

"Document referred to in third answer of Alvarez."

"Title in favor of Don Juan McQueen of ninety-eight caballerias and 8 acres of land at the plantation called San Juan Nepomucene.

"Don Enrique White, colonel of the royal armies, civil and military governor of this city of St. Augustine of Florida and its province, by His Majesty: Whereas in royal order communicated to this government on the twentieth of October, 1790, by the Captain-General of the Island of Cuba and two Floridas, it is provided, among other things, that to those strangers who, of their own accord, should present themselves to swear vassalage to our sover'ign there should be granted and surveyed lands gratis in proportion to the workers that each family might have. That Don Juan McQueen, captain of militia and commander of them upon the river St. Johns and St. Marys, having presented himself and taken the customary oath, he solicited of the government, and there were granted, surveyed, and delivered him, among other lands, ninety-eight caballerias and eight acres of land at the plantation called San Juan Nepomucene as part of those corresponding to him, which land is known and distinguished under the following dimensions and lines: The first line runs south twenty-two degrees west, beginning at a pine marked with
(132) a cross on the margin of the river St. Johns, and ends at a stake with the same mark, bounded on the lands of Don Thomas Sterling, containing in measurement one hundred and forty chains.

"The second runs west, begins at a stake and ends at a pine with the same mark, having in measurement one hundred and fifty chains.

325 "The third runs north, beginning at said pine and ends at another with the same mark of a cross; its measurement is of one hundred and sixty chains.

"The fourth runs west, commencing at said pine and ending at another with the same mark, containing in its measurements one hundred and ten chains.

"The fifth runs north, beginning at the pine referred to, and ends at a stake with the same mark, its measurement is one hundred and ten chains.

"The sixth runs to the east, beginning at the aforesaid stake, and ends at a pine with the same mark, containing in measurement eighty chains.

"The seventh runs north fifty degress, beginning at said pine referred to, and ends at a cypress marked with the same mark of a cross; it has in measurement forty chains. Its front runs partly on the river St. Johns and partly on McGirt's Creek, forming an irregular figure divided by various creeks, as appears from the certificate given by the captain, Don Pedro Marrot, commissioned judge for said distribution and measurement of lands, dated the fourteenth of January, one thousand seven hundred and ninety-two, and its corresponding plat, executed by Don

(133) Samuel Eastlake, who was surveyor at said measurement. And whereas there had been no title whatever issued to him for proof and security of his dominion to said lands, in the form that it was executed to others; that there has already elapsed more than ten years' uninterrupted possession to obtain the useful and direct dominion to the aforesaid lands, and in absolute property, having built houses upon it, and cultivated them, and finally complied with all the other conditions which the government established for grants and concessions of this nature, apparent in the title issued to other settlers, as stated in the proceedings moved
326 by the interested soliciting to have issued to him the corresponding titles to the land which he has already measured and bounded, and of which he is in possession. Therefore, and in consideration of all of which, having been previously advised by his lordship, my lieutenant auditor of war and assessor-general, I have thought proper to grant to him as in the name of His Majesty and of his royal justice which I administer, I do grant to the aforesaid Don Juan McQueen the aforesaid ninety-eight caballerias and eight acres of land of which the said plantation is composed, for himself, his heirs, and successors, in absolute property, and in issuing to him, as by these presents I do, the
(134) corresponding title, by which I separate the royal exchequer from the right which to said lands I had, and I cede and transfer it to the aforesaid McQueen, his heirs and successors, that in consequence thereof they may possess it as their own, use and enjoy it free from all encumbrance, with all its inlets, outlets, uses, customs, rights, and services with it had, has, and in right and in law thereto appertained and might belong, and it being their will, they may sell, cede, exchange, transfer, and alienate them as may best suit them, in virtue of the royal order already cited. To all of which I interposed my authority as far as I can and of right ought to.

"Given under hand, and countersigned by the undersigned escribano of His Majesty and of the government and royal exchequer in this city of St. Augustine of Florida, the twenty-seventh of February, one thousand eight hundred and four, (interlined) to the aforesaid Don Juan McQueen, valid.

"ENRIQUE WHITE.

"By order of His Excellency:

"JOSE DE ZUBIZARETTA,
"*Escribano of the Government.*

327 "I certify the foregoing to be a true, correct translation of the Spanish document annexed.

"JOS. S. SANCHEZ,
"*In. and Tr. Sup. Court, E. D. F.*"

Objected to as immaterial and irrelevant.

Sustained. Exception noted.

(135) Defendant offers in evidence so much of the testimony of Antonio Alverez, from the same book, p. 281, which reads as follows:

Q. Are you acquainted with all the royal titles granted by the Spanish governors of this province for lands to individuals?

A. All the royal titles exist in my office. I am acquainted with them in that way. I know they are in my office.

Q. Were not all the royal orders granted under the royal order of 1790 and 1815?

A. Yes.

Q. Were not the regulations of Governor White in force in this province from their publication, in 1803, until the transfer of Florida to the United States?

A. Yes.

* * * * * * *

Q. Was the rule adopted by Governor White of ten years' occupancy and cultivation of land considered necessary for a complete title, what is called a royal title, in cases of concession made by other governors?

A. I don't know that Governor White made any rule of ten years' possession. I believe it was Governor Quesada that made that rule. * * *

Q. Do you recollect any case in which a royal title was granted for land until the party had complied with the conditions of his grant,
(136) and did not the Government always require proof of such compliance with conditions before the royal title was given?

328 A. I do not recollect of any case. I know that they generally required proof of their having complied with the conditions of the concession.

Examined by the COURT:

Witness states that no time was limited, after the concession was made, within which the survey was to be made. The general time within which the party was to take possession of the lands granted was from three to six month, in some instances more time was allowed. Witness supposes that the survey of the land would be the taking possession. Witness states that the party must have ten years' continued possession to entitle him to the royal title. Witness does not know of any difference as to the survey, occupancy, and possession between mill grants and other grants.

(Objected to by complainant's counsel on the ground above stated. Sustained. Exception noted.)

Defendant offers in evidence from the same book, p. 288, so much of the report of the register and receiver as reads as follows:

"It is true that the original of this document or claim has been found in the office of the public archives, but it is a matter of history that the papers now deposited there were for a long time after the change of government most loosely kept and guarded, and it was a matter of
(137) equal facility to take a paper out or smuggle it in. From the best evidence we have been able to acquire upon this subject it appears to the board that there were two offices at this place under the Spanish Government—the escribano office, which was regularly kept in books stitched together in consecutive pages, with all the records closely following each other, so as to make it extremely difficult to interpolate a grant. For the records of this office we have high respect; it seems to have been a place where all grants were recorded when fully
329 matured. The other, the office of the governor's secretary, was of a different character; here all the papers were in loose and detached

sheets, easy to have been taken away or to have had a forged document thrust among them without the power of detection.

"This is the office in which all the memorials for lands, with the inchoate decree of the governor, were first thrown, and it does appear to the board that these first decrees do in no case amount to a grant, but barely give to applicant the right to become a settler upon the performance of all the conditions imposed by law. We will give an exemplification of our ideas: A. B., upon coming into the province to the governor, if he is a new settler, writes his memorial to the governor and applies for 50,000 acres of land. The governor says, 'Let it be granted until, according to the number of his family, the portion to which he is
(128) entitled is allotted to him.' This paper is thrown into the governor's secretary's office, and, as we conceive, is itself no record and conveys no title. It is a bare permission to the applicant to settle in the country and to receive his lands if he shall take the oath of allegiance; 50,000 acres if he has worked enough to justify the grant, and 500 if by the number of his family he is entitled to no more. It will not be pretended that the party could claim the lands thus granted if he never afterwards took the oath of allegiance; nor can it be pretended that by the mere grant, as above supposed, the 50,000 acres are conveyed until some subsequent step is taken by the party to consum'ate his title. In addition to the oath of allegiance he was required to swear to the number of his workers, and when this was done according to the number of his workers was the quantity granted and subsequently surveyed by the public surveyor. Then it was that the documents were all transferred to the office of the escribano, fairly written out in a book of records, and entitled to the fullest confidence; but the loose papers in the gov-
330 ernor's secretary's office, the first memorial and decree, such as we have just described it, do not seem to have conveyed any title, to have been considered any record, or worthy of any preservation. It was over this last office that Thomas de Aguilar presided; it is from
(139) this office that so many monstrous grants have emenated; it is from this office that the originals of Thomas de Aguilar's certificates of grants are lost, and it is in this office that the original of the grant before us is to be found. It may be as well, from the loose manner in which these documents in the governor's secretary's office were kept, as from the little faith to be attached to Aguilar's certificates, that so many of the originals of these certificates are lost; and if the view which we have taken of this matter be correct Aguilar may have been a meritorious officer, his certificates perfectly genuine, and the grants which are pretended to be conveyed by them of no validity.

"It is possible that after making application for the lands, as certified by Aguilar, the party, unable or unwilling to comply with the conditions, had abandoned his intention of becoming a Spanish subject and a Spanish grantee; and yet, having scrupulously preserved the certificate of Aguilar, given at the time when the original, known to be of no value, was thrown away, has come before this board since the change of flags and applied for the lands; and such a case, if it were not for the 'grant absolute property,' might be deemed this of Miransa's to be. If he had asked for ten leagues square of Governor White, and the governor had said, 'Let it be done in proportion to his family, and Miranda had

proven that he had 1,000 negroes or 1,000 children, Miranda
(140) would have been entitled to the amount, however large, which,
by the regulations, he could claim for them; but as he has proven
331 neither the one nor the other, and has never surveyed the land,
even if the grant be genuine, he can take nothing but a title like
this.'"

Same objection. Sustained. Exception noted.

Defendant offers in evidence certified transcript of the General Land Office of the tract book, relative to township 7, range 30, which is filed and marked "Defendant's Exhibit 2."

Also certified copy of the President's order, dated March 8th, 1839, relating to township 7, range 30, reserving from sale. Filed and marked "Defendant's Exhibit 3."

Certified copy of the President's order, dated February 1st, 1883, reserving lot 2 of section twenty-one (21), for light-house purposes, was offered in evidence, which was filed and marked "Defendant's Exhibit 4."

Certified copy of the President's order, dated May 4th, 1893, reserving lands, township 7, range 30, for military purposes, was offered in evidence, filed, and marked "Exhibit 5."

(141) Certified copy of President's order, dated Jany. 22nd, 1869, reserving lands for light-house purposes, was offered in evidence, filed, and marked "Exhibit 6."

Certified copy of the report of the Assistant Commissioner, Gen. Land Office, to the Secretary of the Interior, dated June 27th, 1888, was offered in evidence, filed, and marked "Defendant's Exhibit 7."

Certified copy of letter from the Commissioner of the G. L. O. of the U. S. to Sur. Gen. Florida, dated March 28th, 1887, offered in evidence, filed, and marked "Defendant's Exhibit 8."

Certified copy of letter from the Commissioner of the G. L. O. to Chas. M. Furman, dated August 13th, 1889, filed and marked "Defendant's Exhibit 9."

332 (To each of the above documents offered in evidence complainant's counsel object to on the ground that the same are immaterial and irrelevant—Exhibits 2–9.)

Overruled at this stage of proceedings until master can ascertain for what testimony the whole testimony their relevancy. Exception noted.

Certified copy from the answer of the surveyor-general of Florida to certain questions from B. B. Furman et al., offered in evidence, marked "Defendant's Exhibit 10."

(142) Complainant objects to the introduction of the above document on the ground that it is irrelevant and immaterial.

Overruled on same as last grounds. Exception noted.

Defendant offers in evidence from the Commissioner G. L. O. certain letters—Sanches, Furman, et al.—marked "Exhibit 11."

Complainant's counsel object on the ground that it is immaterial and irrelevant.

Overruled on same ground. Exception noted.

Defendant offers in evidence certified copy of the decision of the Commissioner of the G. L. O. to the appeal of Furman et al. to the Secretary of the Interior, marked "Defendant's Exhibit 12."

Defendant's counsel object on the ground that it is immaterial and irrelevant.

Sustained on ground that such decision on and

Certified copy of the concession of Jesse Fish by the Spanish governor (in Spanish) for 500 acres of land, marked "Defendant's Exhibit 13."

Objected to on the ground that said document is not sufficiently
333 proved to entitle it to be admitted in evidence. There is no
(143) authority to introduce in evidence a document from the surveyor-general's office of Florida upon certificate of the surveyor-general, he having no seal of office. It does not appear that the surveyor-general is familiar with the Spanish language so as to enable him properly to certify that the transcription is a true copy of the document in his office, and that said transcription can not be introduced in evidence without proper translation of the same.

Sustained. Exception noted.

Defendant offered in evidence certified copy from the surveyor-general's office, a part of the proof offered in the matter of the same concession (in Spanish) filed and marked "Defendant's Exhibit 14."

The same objection is interposed as the foregoing, with the additional objection that these are isolated papers in a certain cause, and do not appear to constitute the whole record in reference to this particular grant.

Sustained. Exception noted.

Defendant offered in evidence certified copy from the surveyor-general's office (in Spanish) of the petition of the administrator of Jesse Fish for a royal title to a five hundred acre grant, and proof of occupancy to the possession. "Defendant's Exhibit 15."

(144) Counsel for complainant object to the foregoing as irrelevant and immaterial.

Sustained. Exception noted.

Defendant offered in evidence certified copy of the petition of G. W. Perpall, with translation of same and of the petition relative to this same grant to Jesse Fish, dated Apr. 1st, 1791, and the petition of Perpall for the heirs of Jesse Fish, to the commissioner to ascertain title, marked "Defendant's Exhibit 16."

334 Objected to on the same grounds as the foregoing, and the further objection that the purported translation does not appear to be made by any person duly, or upon proof of familiarity of the Spanish language.

Defendant notes that he does not offer the translation in evidence, but only the document; it was attached to the original in the surveyor-general's office.

Sustained as immaterial and irrelevant. Exception noted.

Defendant offers in evidence certified copy (in Spanish) of the concession to Lorenzo Rodriquez, dated Feb. 15th, 1793, marked "Defendant's Exhibit 17."

Same objection as above. Overruled at this stage of proceedings. Exception noted.

Defendant offered in evidence certified copy (in Spanish) of
(145) the concession of Francesco Sanchez of land on Anastacia Island, dated July 3rd, 1802, marked "Defendant's Exhibit 18."

Same objection as above. Overruled at this stage of proceedings. Exception noted.

Certified copy from the surveyor-general's office of the notice to claimants to present their claims, dated March 8th, 1833, marked "Defendant's Exhibit's 19, 20."

Counsel for complainants object to the introduction of Exhibits 19 and 20 on the ground that they are irrelevant and immaterial; that they are not properly admitted in evidence upon what purported to be the signature of the surveyor-general of Florida, and that there is no evidence to show that the notice purported or intended to be given was ever given so as to affect the complainants.

No objection is taken to this paper as to want of proof as to the signature of the surveyor-general. Sustained. Exception noted.

335 Defendant introduces in evidence from vol. 3, American State Papers, Duff Green edition, p. 661, so much which reads as follows:

(146) "Sarah Fish presented her memorial to this board for 500 acres of land lying in Graham's Swamp, at the head of the river Matanzas, with a title for the same, dated April 24", 1819, in favor of the heirs of Jesse Fish; which are ordered filed."

Objected to as irrelevant and immaterial. Sustained. Exception noted.

Defendant offered in evidence from vol. 4, American State Papers, Duff Green edition, page 280, so much which reads as follows:

"Claim No. 115: Present claimant of Jesse Fish; original claimant, Jesse Fish; date of concession, or order of survey, 1st of April, 1791; quantity of land, 500 acres; by whom conceded, Quesada; authority or royal order under which the concession was granted, 1790; where situated, Graham's Swamp."

Objected to by complainant's counsel as immaterial and irrelevant. Sustained. Exception noted.

Defendant offered in evidence from the same edition of the same book, page 296, under the proceedings of the board, under date of September 14th, 1825, which reads as follows:

(147) "The following claims were, on motion by their respective attorneys, confirmed by the board, viz: The heirs of Jesse Fish, for 500 acres of land situate in Graham's Swamp."

336 Same objection. Sustained. Exception noted.

Defendant offered in evidence from same vol. (4), same edition, page' 431–432, so much as reads as follows:

"No. 115. See report No. 1, page 280.

"Heirs of Jesse Fish vs. United States, for 500 acres of land.

"*Memorial.*

"*To the honorable commissioners appointed to ascertain claims and titles to land in East Florida:*

"The memorial of the heirs of Jesse Fish respectfully showeth that your memorialist claims title to a tract *of* or parcel of land containing five hundred acres, situated at the head of the Matanzas River, at a place

known during the time of the British held this province by the name of Todds Field, which tract of land was granted by the Spanish Government to the deceased, Don Jesse Fish, on the 1st of April, 1791,
(148) for head-rights, as will more fully appear by a memorial and decree exhibited and marked 'A.' And your memorialists further show that said tract of land was continued in the possession and has been cultivated by the deceased, Jesse Fish, and his (heirs) since the first day of April, 1791, to the present day. Your memorialists further show that they are at present residents of the Territory of Florida, &c.

"G. W. PERPALL,
"*For the Heirs of Jesse Fish.*

"(Here follows translation of a concession made by Governor Quesada to Jesse Fish, dated the 1st of April, 1791.)

"(Here follows translation of a royal title for the same, dated the 24th of April, 1819, by Governor Coppinger to the heirs of Jesse Fish.)

337 "*Decree.*

"Heirs of Jesse Fish vs. The United States, for 500 acres of land.

"The board having ascertained the above to be a valid Spanish concession, do confirm the same accordingly.

(149) "*Testimony.*

"Sarah Fish vs. The United States, for 500 acres of land.

"G. W. Perpall, being sworn, states that he came to East Florida in 1803, and that Mr. Fish was then in possession of said tract, and cultivated it ever since to his death, and that his heirs have also cultivated it, except in the year 1812. It was surveyed by Charles W. Clarke, who has lands to the south of said tract; and as Mr. Clark took into his tract the lands which Mr. Fish asked for, for which reason witness believes that the plat was laid aside.

"Heirs of Jesse Fish vs. The United States, 500 acres of land.

"G. W. Perpall, being sworn, states that Jesse Fish cultivated the said tract of land in the year 1803, and continued to do so until his death, when his heirs have done so up to the present period.

"G. W. PERPALL.

"Before the board in session, September 14th, 1825."

(150) Objected to by complainants' counsel on the ground that it is irrelevant and immaterial, and that those complainants are not bound by testimony of witness given in a case to which they were not parties, & as irrelevant & immaterial.

Sustained. Exception noted as to all except testimony, which is admitted at this stage of proceedings, subject to further decision of master. Exception noted.

338 Defendant introduces in evidence certificate from the commissioner of agriculture of the State of Florida, as claim of ownership of certain land in township 7, range 30, marked "Defendant's Exhibit 21." It is introduced for the purpose of proving the identity of the land named therein.

Objected to by complainants' counsel on the ground that it is irrelevant and immaterial and because the certificate of the commissioner is not evidence of what it proposes to state as facts. Sustained. Exception noted.

Certified copy of deed of Clarissa Fish to Jno. Perpall, dated 31st of December, 1825, marked "Defendant's Exhibit 22."

Objected to on the ground that it is irrelevant and immaterial. Sustained. Exception noted.

Defendant offers in evidence from Clark's Land Laws, p. 1023, so much of the testimony of Mr. Clark as reads as follows:

(151) Question. What validity under the Spanish Government had British grants where the grantees had removed from the province under the treaty of 1783?

Answer. If they had not recorded their grants and got them recognized by the Spanish Government they had no validity. Recorded and recognized are the same thing. All persons who claimed lands under British grants came forward and had them recorded.

Q. Upon what conditions were these grants recorded and what has the grantee to conform to?

A. The grants were recorded upon condition of taking the oath of allegiance.

Q. Were they recorded upon any other condition?

A. No, sir.

339 Q. Were those rules rigidly enforced, and the lands forfeited in consequence of their not being observed?

A. Yes.

Q. What was the evidence of forfeiture?

A. Their being granted to another person.

Q. Was the re-granting of lands the only mode of declaring them forfeited.

(152) A. I knew of no other.

* * * * * * *

Testimony of Mr. Segui or Segur.

Q. What is your age?

A. Thirty-eight years.

Q. How long have you resided in the province?

A. Ever since I was born.

Q. Were you a clerk in any office?

A. I was a clerk in the escrivano's office.

Q. How old were you when you were first taken into that office?

A. About fourteen or fifteen years.

Q. How long did you write in that office?

A. About ten or twelve years.

Q. Were the grants recorded in the office in which you wrote?

A. The royal titles were, but not the grants. * * *

From page 1024, same volume testimony, same witness:

Q. Were the concessions issued from the escrivano's office?

A. They were not; they were issued from the secretary's office, and the royal titles from the escrivano's office.

Q. Had the escrivano's anything to do but the bare registering of the royal titles.

A. He had not.

Q. What do you mean by recording?

340 (153) A. The original was placed in the care of the escrivano, who gave certified copies of them, when required of him.

Q. Whose duty was it to make out the royal title?

A. The escrivano's, by order of the governor. The royal title was made out by the escrivano, and taken to the governor to sign, after which it was returned to the escrivano, who filed it in his office. The escrivano made out the royal title when the governor was satisfied that the party was entitled to it.

* * * * * * *

Q. When a party applying for confirmatory titles to the governor, was it not necessary to satisfy him that the conditions were performed?

A. It was, and he would not issue them unless satisfied.

Q. In what manner did the parties satisfy the governor that they had complied with the condition?

A. He directed the party to prove by witnesses before him, the escrivano or judge, that they had done so.

A. Was it always required that the party examined should be put on oath?

A. Always.

(154) Q. Was it not always necessary for the party to prove by witnesses, in addition to his own oath, the compliance with the conditions of the concession?

A. It was.

Q. Were you ever present when the party claiming a royal title proved the compliance of the conditions of the concession?

A. Several times.

Q. Were not the examination of those witnesses in these cases strict?

A. Yes.

Q. Do you know of any royal title being refused by the governor for a non compliance of conditions?

341 A. None. The parties would not dare go before the governor if they had not complied with the conditions.

* * * * * * *

Q. When a party obtained a concession were not the original concessions found in the secretary's office?

A. They were.

* * * * * * *

Q. When a party obtained a concession which was occupied, was it not necessary to petition for a new location on vacant lands?

A. Yes; it was.

* * * * * * *

Q. (From page 1025.) When a person applying for royal title, in conformation of his concession for head rights, was it not necessary to prove to the governor that he had the head rights?

(155) A. I believe it was.

* * * * * * *

Q. Was not the public domain highly estimated by the governor?

A. You must show service before you could obtain grants, and lands could not be purchased for money.

* * * * * * *

Q. Could any other person have anything to do with the public domain but the governor?

A. No one.

Q. Was the governor tenacious of his rights?

A. He was.

* * * * * * *

Testimony of Mr. PERPALL.

Page 1026.

Q. Did you at any time apply for land as head rights?

A. I have.

Q. What course did you pursue, considering yourself acting in pursuance to the regulations?

A. I presented my memorial, asking for lands according to the number of my head rights, and they were granted to me on condition of taking possession and cultivating the same for ten years.

342 Q. At the expiration of the ten years was it necessary to prove the possession and cultivation before you obtained royal titles?

(156) A. It was.

Page 1,027.

Q. Was it not always necessary that proof should be given of a substantial compliance of the conditions?

A. It was.

* * * * * * *

Page 1,027.

Q. If a petitioner were in possession of the lands and cultivated the same would he grant him other lands?

A. He would grant him other lands for the surplus of his head rights.

* * * * * * *

Testimony of Mr. FARQUHAR:

Page 1,031.

Witness says: I have been a resident of the Territory since 1803. * * * I heard of the regulations of Governor White, I think, in 1805 or 1806; I have seen them. I consider them as official acts, and binding while he was governor. We obtained land under him, by memorial, setting forth our head rights upon which concession was issued, corresponding to the representation of those head rights. They were granted on condition of locating by a certain time, but the concession was not considered forfeited by a noncompliance in the stated time.

Royal titles would not be given unless the parties would show
(157) they had complied with the conditions. I allude to the royal order of 1790. * * *

Page 1,032.

The general regulations for surveying lands under the royal order of 1790, granted for head rights, were, that, when upon rivers, they should be one-third front and two-third' back. The same regulations were not pursued in the location of lands under the royal order of 1815.

343 Q. In case a grant was made, and the land granted was found vacant, and that it had been so for more than ten years although granted to another, would not the first grantee lose his right to it?

A. In such cases the Government required the first grantee to be cited, and, in case he could not show good reasons for his not complying with the conditions of his grant, he lost all title to the same.

* * * * * * *

I was a judge under the Spanish Government for two years—in 1813 and 1814.

* * * * * * *

It was necessary that I make myself acquainted with the orders and regulations of the governors. * * * I considered myself as bound to conform to the orders and regulations of the governors. The regulations of the governors were considered as the laws of the
(158) land, subject to the change of the governor who promulgated them, or his successors. * * *

(Top page 1,033.)

Q. What was the fate of the lands which had been granted by the British Government by the operation of the treaty with Great Britain in 1783?

A. Those persons who remained and took the oath of allegiance were confirmed in their titles; but those who left the country lost their claims, and the lands reverted to the Spanish Government.

Q. Could any person having lands granted to them for head rights obtain other lands without shewing he had fulfilled the conditions of the first and introducing additional negr'os?

A. He could not, unless he could show that the first lands were not sufficient for his hands.

Q. What was the character of Governor White?

A. He was a man of strict integrity, and was distinguished to the strict performance of the duties of his office.

* * * * * * *

344 Q. At what time did he come into office?

A. In about 1794 or 1795.

* * * * * * *

Q. When persons applied for lands to Governor White or Governor Kendelan, did they not require that proof should be made of the performance of the conditions?

(159) A. Yes.

Q. Was not this proof made before the tribunal?

A. Yes.

Complainants' counsel object to all the foregoing testimony, extracte from Clark's Land Laws (Appendix), and move to strike out same o the following grounds: That it is irrelevant and immaterial to the issu involved in this suit; that neither complainants nor their ancestors o any person or persons, under whom they claim title, have been partie to the proceedings of which such extract purport to be evidence, an that they are not bound by the same, either directly or indirectly, hav ing had not part of the examination or cross-examination of such witnes that the purported testimony is not the proper method of proving Spanis laws or customs in this suit; that it does not appear that such laws o customs were in force at the time that the grant was made to Jesse Fis and that such grant is not based on the claim of head rights.

Sustained. Exception noted.

(160) Defendant further introduces in evidence from Clark's Lan Laws, from p. 974, pp. V., so much of the regulations of Octob 15th, 1754, as reads as follows:

"The confirmation of the patents of the possessors of these lands sha be given in my royal name, by which their property and claim in sai lands shall be rendered legal, as well as in the waters and uncultivate parts, and they and their successors, general and particular, shall not b molested therein."

345 Objected to as irrelevant and immaterial. Sustained. Excep tion noted.

Defendant introduces in evidence, from same book, page 973, so muc of the same as reads as follows:

"Experience having proved the inconveniences that arise to my sub jects of the Kingdom of the Indies from the decree issued by the roy order of the 24th of November, 1735, that those who would enter upo the royal possessions of those dominions should necessarily apply to m royal person, * * * I have therefore resolved that in the grant sales, and compromises of royal cultivated and uncultivated lands no made, or which shall hereafter be made, the provisions of the regulatio shall be faithfully observed and executed."

(160) Objected to by complainants' counsel on the ground that th same is irrelevant and immaterial, and that it does not appear tha such regulation was in force at the time of the grant to Jesse Fish. Sus tained. Exception noted.

Defendant offers in evidence, from same book, p. 1015, so much of th testimony of George Clark as reads as follows, to wit:

"The original practice pursued by foreigners to procure land under th royal order of 1790 was first the oath of allegiance; second, applied fo the quantity of land to the surveyor-general, who determined the quan tity to be given, who had it surveyed and plotted. The plat was the given to the claimant when called for. Claimant then presented the pl to his secretary for royal titles. This practice was continued between th years 1801 and 1804, when Governor White changed the system into direct application to himself."

Objected to by complainants' counsel on the ground that the same irrelevant and immaterial, and that these complainants are not bound b testimony of witnesses given in a case to which they were not partie

Sustained. Exception noted.

346 (162) Defendant offers in evidence, from same book, p. 1013, so much of the testimony of Joseph M. Hernandez as reads as follows:

"Witness states that where a person abandoned the land conceded to him upon condition of occupying it a certain number of years, it was discretionary with Governor White, upon an application after two years' abandonment, to confirm or reject his title. The other governors required that the grantees should prove the cultivation and an uninterrupted possession for ten years of said lands."

Objected to by complainants' counsel on the ground that the same is irrelevant and immaterial, and that these complainants are not bound by the testimony of witnesses given in a suit to which they were not parties. Sustained. Exception noted.

Defendant offered in evidence, from same book, p. 1014, same witness, so much of his testimony as reads as follows:

"The governors have uniformly regranted lands where the party has abandoned the same on any circumstance whatever. * * *

"Where the emigrant left the territory with an intention to abandon his settlement, after two years' absence the governors felt themselves at liberty to forfeit his right by granting to others."

Same objection as above is interposed by complainants' counsel. Sustained. Exception noted.

(163) Defendant offered in evidence so much of the order of Governor Quesada of Sept. 2nd, 1790, as appears in the same book on page 994, which reads as follows:

347 "1. I grant to all the inhabitants, permanently settled and subjects of His Majesty, in his royal name, for their use, the quantity of land they may require, in proportion to their force, in any part of this desert province, without any exception. To this end those desirous of obtaining the same will present themselves to me within twenty days, stating their circumstances by memorial, what lands they have obtained to the present period and in what quantity, and in what place they are desirous of locating them now, under precise condition that it will be without injury to a third person.

"I will attend to their solicitude, according to the examination I may make thereof; and although the laws of the Indies authorize me to make an absolute distribution of the same, and being in the case of the first of title 12th, book 4th, I abstain therefrom from powerful motives. But, for the greater security of those interested, I will forward my ideas and representations on the subject to the King, persuaded that in consequence thereof those obtaining grants from me now will be confirmed in the possession of the same."

Objected to on the same grounds as above. Sustained. Exception noted. If applicable, the court is bound to take note of the same.

(164) Defendant offered in evidence, from the same book, pages 997–996, so much of the royal order of November 20th, 1790, as reads as follows:

(Page 997.) "His excellency the captain-general of this province encloses me, under date of the 29th of November of the last year, the following royal order (page 996): That those foreigners alone will be received who may of their own free will present themselves and s'ear allegiance to His Majesty, to whom there shall be granted and measured

lands gratis in proportion to the working hands each family may hav
(On page 997.)

348 (Page 997.) "In virtue of which I order the same to be pu
lished for the present, that it may be made known to all, bei
understood that only those shall be admitted as resident settlers wh
besides their good conduct and honorable proceedings, are good farm
and mechanics, who are beneficial to the settlement and advancement
the province, for which purpose there shall be granted them the gifts
forth in the inserted royal order. It is also made known to those w
have obtained lands, in the meantime, from this Government that th
present themselves to the same within the space of two months, for
purpose of asking and obtaining the requisite title of prope
(165) from the office of the Government secretary, from whence
necessary orders will be issued after having registered the sa
in the notary's office.

"And that it may serve as an incitement to all, I order, according
the powers I am vested with, and make known for the present, that
grants be of one hundred acres to each father of family and fifty to e
white person, or of color, of which said family is composed; also if p
sons are desirous of obtaining a greater quantity of land, and there be
a probability of cultivating the same, they shall obtain an additio
number of a thousand acres; it being understood that, in all the conc
sions, the utility and not the quality of the lands shall be attended to,
that each person shall acquire a proportionate quantity of each; as a
that the width of each of said concession must be only the third part
the length, and said length must not extend on the banks of the riv
and creeks, but towards the interior of the lands; vesting always w
the Government the care of rewarding or punishing with additio
expenses, or absolute privation, as time shall discover, the merit, ap
cation, and advantages of the agriculturists, or the contrary vices.

"A copy from the original I attest.

"DOMINGO RODRIGUEZ DE LEON.
"*Notary of Government.*"

349 Objected to by complainant's counsel on the ground that the sa
is irrelevant and immaterial. Sustained. Exception noted.

(166) Exhibits Nos. 18, 14, 17, 13, 16, handed to W. W. Dewhu
esq., for translation.

(167) ST. AUGUSTINE, FLA., *March 4th, 189*

CHARLES M. FURMAN,)
vs.
H. L. MITCHELL ET AL.)

The further taking of testimony in this case was this day contin
before H. H. Buckman, master, on the part of the defendant.

Present: Fleming and Rinehart, esqs., for complainant; Dewhu
and Hamlin, esqs., for defendant.

JOHN S. MASTERS, a witness introduced on the part of the defendant, being duly sworn, deposes as follows:

Q. Mr. Masters, will you state your age and where you reside?

A. I reside in St. Augus'ine, St. Johns County, Florida; I was born in 1806.

Q. Have you always resided here?

A. Yes, sir.

350 Q. Will you state what connection, if any, you had with the building of the sea wall at St. Augustine?

A. I superintended that work for seven years.

Q. Whom were you under?

A. I was under General Benham.

Q. Could you state what year that work began?

A. I began the work in '38. I started first with Col. Dancey in 1836. In '38 I took up with Gen. Benham.

(168) Q. Where did you work?

A. At the quarries and sometimes over here.

Q. Well, how much of the sea wall was built in that 7 years, from what part of the city to what part?

A. From the plazza way back to the barracks.

Q. Were you continuously cutting stone during that 7 years?

A. Continuously.

Q. I mean the whole year round?

A. Well, we stopped the work in the summer and started again in October, but I was still employed, under reduced wages.

Q. What did you do in the summer?

A. I had the priv*i*lege of cutting stone that was of no use and selling it on my own private account.

Q. How much of the area did you cut over during the 7 years in Anastasia Island?

A. I could not tell you. I suppose about $\frac{3}{4}$ of a mile in different quarries from the north to south.

Q. Was there any reason for you limiting yourself to this $\frac{3}{4}$ of a mile?

(Counsel for complainant objects. Objection sustained.)

A. No reason.

351 Q. In selecting the lands on which you quarried the stone for building the sea wall were you at liberty to select wherever you chose?

A. Yes, sir.

Q. What was the location of the lands relative—that is, the lands quarried—to the old light-house?

(169) A. I don't believe I ever quarried any rock any closer to the old light-house than $\frac{1}{2}$ of a mile south of light-house.

Q. Now, Mr. Masters, do you know where what is called the old Spanish well is located? Did you quarry north or south?

A. Yes, sir; we quarried both north and south.

Q. Can you locate that well by reference to the road that runs north and south from the old light-house and the road that runs east and west through Fish's Island?

A. I have most forgotten. Well, maybe about 400 yards, more or less; the intersection of these two roads was about 400 yards north of the well.

Q. You stated that you were superintendent of the building of this wall; how far south of the well did you quarry?

A. Well, about a half of a mile, I reckon.

Q. Relative to this road that ran north and south to the old lighthouse, how did the quarries lay?

A. Very old quarries; I am not much acquainted with them; nearly all quarried out.

Q. But, so far as the old quarry is concerned, how much on the east and how much on the west?

A. I don't know any more quarries; I could not tell, it has been so long. There were two roads, one ran south and one ran west. There used to be a good deal of the old quarries north and east of the old lighthouse which were carried away by the ocean.

352 Q. Will you state whether or not if you ever knew or heard of the boundaries of the King's quarries?

A. No; I never did.

(170) Q. State whether or not the people of St. Augustine, generally—the public at large—exercised the right to quarry stone on Anastasia Island without restriction.

(Counsel for complainant objects, on the ground that same is irrelevant and immaterial. Objection overruled.)

A. We always quarried there without restriction; always considered it public quarries.

Q. On the whole island?

A. Yes, sir.

Q. Did the public quarry stone in any place where they chose to go?

A. We went to any place where there was a quarry.

Q. During the 7 years that you were quarrying stone where did you quarry stone?

A. We quarried at any place there was stone.

Q. What was the character of Anastasia Island as to land?

A. Well, mighty poor land.

Q. Is it susceptible of cultivation?

A. Not that I know of.

Q. Is the land of Anastasia Island farming land?

A. No, sir.

Q. Where did you load you' stone? Did you have a landing?

A. Yes, sir; I had two.

Q. Where did you have your landing?

A. There is a landing up at Lorenzo Creek, near the mouth of the creek, and a landing further up the creek.

Q. Do you know whether or not either of these two landings were used by the United States Government? Was there any compen-

353 sation paid to anybody for the use of them?

(Objected to by complainant's counsel, on the ground that same is irrelevant and immaterial. Overruled. Exception noted.)

(171) A. No; there never was that I know of.

Q. Did you pay any compensation during the 7 years that you were quarrying stone?

A. No, sir.

Q. Mr. Masters, what occupancy of Anastasia Island or part of Anastasia Island, here, did Mr. Furman, or Mr. Perpall acting for Mr. Furman, have during that time that you were quarrying stone—from '38 to '45?

A. I have always heard that they only claimed Fish's Island until I heard that they were going to enter suit against the Government for quarrying; then I found out that they have a right to something else.

Q. What did they actually occupy at that time?

A. The part they called Fish's Island.

Q. Where was the old light-house relative to the new one?

A. Well, I could not exactly tell. It was west and a little north.

Q. How far back can you remember that old light-house?

A. I can remember since 1812.

Q. What was the character of it?

A. They had a stone fence around it, with portholes through it, and they kept a small detail of men there during Spanish times, and they changed the detail every now and then during the week. There were two staffs for flags, one on the north and one on the south. When a vessel was coming from the south they would put up the south flag, and when one was coming from the north they would put up the north flag. This was in Spanish times.

354 Q. Do you know how much of the reservation, under Spain, was set apart for that old light-house reservation?

(172) A. Well, no; all that I know was that I hear there was about twenty acres.

Q. Do you know whether that was the general understanding in the community?

A. Well, I suppose so; I heard my father say so. He said that the old light-house reservation had twenty acres reserved, until the water washed it all away. I have known the time that the old light-house was a hundred yards from the ocean.

Q. Do you know what that old light-house was called during Spanish times?

A. I don't know the name for it in Spanish, but I think it was called "Leto Espaniola" (translated, Spanish light).

Q. Do you know where the lookout house was in Spanish times?

A. No; unless it was the old light-house. I don't know of any other. They used to have the lookout house, that what the Spanish called the "Lagorita."

Q. Did you know Thomas Douglass?

A. Yes, sir.

Q. Where did he reside—in this place?

A. Right here in Augustine.

Q. Was that the Thomas Douglass that was U. S. district attorney and afterwards judge?

A. Yes.

Q. Is he living now?

A. I think so.

Q. Did you know Col. Robt. Butler?

A. No; I don't think I did.

Q. Did you know J. H. Bronson?

355 A. Yes; he lived at Augustine; was the same person that was
(173) afterwards judge of the United States Court.

Q. Did you know J. M. Hernandez?

A. Yes, sir; he lived here.

Q. Is Judge Bronson living?

A. I don't know; I don't think so.

Q. How about J. M. Hernandez?

A. He is not living.

Q. Did you know Antonio Alvarez?

A. I knew him him; he lived here in Augustine.

Q. Do you know whether he was the keeper of the public archives?

A. He was.

Q. Is he living?

A. No.

Q. Did you know Farquar Bethune?

A I never was acquainted with him. I do not know whether he is living or not.

Q. Did you know Bernardo Segui?

A. Yes; he lived and died in Augustine.

Q. Did you know G. W. Perpall?

A. Yes; he lived in Augustine. He is dead.

Q. Did you know George I. F. Clark?

A. Yes; he lived here. He is dead.

Q. How much of an equipment did you work while you were quarrying stone on the island?

A. I worked four teams and about forty hands.

Q. Can you approximate of all the stone you cut out?

A. No; I could not.

Q. What is the length of the sea wall?

A. I could not tell you. It ran from the plazza to the barracks.

356(174) Q. How wide is the foundation of the sea wall?

A. 7 ft.

Q. How high?

A. About 7 ft. from the bottom of the foundation.

Q. What is the width of the coquina?

A. From 7 to 3 ft.

Q. Are any of the hands that you had working with you about here now?

A. There may be one or two, if they are living. I don't know now where they are.

Q. Did you have occasion while you were quarrying over there to go over to Fish's Island?

A. None.

Q. Do you know whether that was occupied at the time you were quarrying?

A. That place was always occupied. There is an orange grove on it.

Q. Do you know a man by the name of Ferrara?

A. Is his name Frank?

A. Yes.

Cross-examination by Mr. FLEMING:

Q. You stated that Fish's Island was occupied at the time that you were quarrying stone; can you state by whom it was occupied—who had charge of it at the time?

A. Mr. Sanchez, I always heard. When there were no white people on it he had a negro there.

Q. What time was it that you understood that they claimed the Anistasia Island, outside of Fish's Island, what time was that?

A. I can not recollect now about the time.

Q. Was that about the time you were quarrying?

357 A. It was; I think so.

(175) Redirect:

Q. State what the nature of this claim was and how you heard it.

A. I heard by way of Mr. Bronson that they were going to enter suit against the United States Government for cutting stone upon the island. He found out that the Government had a right to it and he did not sue.

ALBERTO ROGERO, a witness on the part of the defendant, being produced and duly sworn, deposes and says:

Q. Will you state, Mr. Rogero, your age and where you reside?

A. I am 85 years old, and I reside in St. Augustine.

Q. Have you always resided here?

A. Most always; except two years.

Q. Do you know the lands that are called Anastasia Island?

A. I know them to be called that.

Q. Well, you know Anastasia Island—where it is?

A. Yes, sir.

Q. Where is Anastasia Island relative to the city?

A. Well, it is over the river from St. Augustine, east.

Q. What official positions have you held in this county?

A. I have been sheriff, assessor, and collector for 13 years; both before and after the war.

Q. Do you know anything about the Fish claim?

A. No, sir; I don't know anything about Mr. Fish, because he died before my time.

Q. Do you know his family?

A. Well, they were called Fish; they were mulattoes; they called them the Fishes.

Q. Where did Jesse Fish reside?

A. I don't know.

358 Q. Have you ever heard of Fish's Island?

(176) A. I have been on it.

Q. Where is Fish's Island?

A. It is south of the barracks.

Q. Is this Fish's Island any part of the land that you bought of the State?

A. I bought three lots of the State.

Q. Are these t'ree lots that you bought from the State—any of them—located on Fish's Island?

A. All of them located there.

Q. Can you describe the three lots that you bought from the State?

A. I first bought the lot of 73 acres.

Q. Do you know the number of it?

A. No, sir; I supposed it was at the landing; I then bought 81 and 66 acres.

Q. 81 is at the landing?

(Objected to by complainant's counsel on the ground that same is irrelevant and immaterial and is not the proper way of proving his title. Sustained. Exception noted.)

Q. About what time was it you bought these lots?

A. I think it was about '66; it was after the war; the first session of the legislature after the war.

Q. Did these three lots on the island and the lot that took in the orange grove and house embrace the whole island?

A. Yes, sir.

Q. Did you occupy lots after purchase?

A. No, sir; I would have sold it, but Mr. Sanchez always pre-
359 vented; when I had a chance to sell I sold to Vernancio Sanchez—
(177) that is, the 81 acres at the landing; I don't know whether it was Vernancio or his son; I don't recollect that I got a dollar for it. I only sold to Sanchez the 81 acres.

Q. Whom did you sell the other lots to?

A. I sold the other lots to Segui and Magruder, the U. S. marshal.

Q. At the time that you bought these lots were there any persons occupying them?

A. No, sir; I don't think there was any one on them at that time; before that there was a lot of negroes there, but Dr. Furman took them to Charleston.

Q. As to that part of Anastasia Island outside Fish's Island, who occupied that?

A. Not anybody.

Q. What was the custom in regard to quarrying stone? What did they do when they wanted to quarry stone there?

A. I don't know what would be the rules.

Q. Did you ever hear of the boundaries of the King's quarries?

A. No, sir.

Q. Have you heard of the King's quarries?

A. I have often heard of them.

Q. Have you ever heard of the old light-house on Anastasia Island?

A. I used to go there.

Q. Did the people that got the coquina buy it or did they go to the island and get it?

A. They must have had a permit.

(178) Q. Do know that there was anybody that got a permit from the Government?

A. I do not know.

360 No cross-examination.

Counsel for complainant having reserved all objections here enters same to the testimony of the witness to be entered on the record as to his testimony in regard to the quarries and the location of the lands testified to by him as irrelevant and immaterial.

Sustained. Exception noted.

Miss A. M. BROOKS, a witness on the part of the defendant, being introduced and duly sworn, deposes and says:

Q. Miss Brooks, will you please state your residence?

A. St. Augustine, I reckon.

Q. Will you state whether or not you have ever visited Spain?

A. I was, and in Sevilla.

Q. Where are the Spanish archives?

A. They are in Sevilla; all the Spanish archives were carried there.

Q. Did you, while you were there, examine these archives?

A. I did.

Q. Did you make any copies of them?

A. I made a great many.

Q. Have you any copies that you made while there?

A. Witness producing some copies says: These I took myself; I had a young man by the name of Don Juan Waldo to assist me.

Q. This was at Sevilla?

(179) A. It certainly was.

Q. In making these copies did you compare the original with the copies?

A. Yes.

Q. (Defendant's counsel refers to paper here marked by the master 23, written in Spanish, purporting to be a description of St. Anastasia, bearing date of 1797, report of the governor of Florida to the King of Spain.)

361 Q. In taking this copy, did you copy this from the Spanish archives?

A. I did.

Q. Are you familiar enough with Spanish now to translate it?

A. I am.

Q. Well, at the time this was translated were you familiar enough to translate?

A. I was.

Q. Can you say that this English translation, attached to this, is a correct translation of it?

A. It certainly is, and there is the original Spanish which can be compared; Mr. Vandrel translates a great deal; he translated this very document; this is his translation; the Spanish document I wrote myself.

(Paper marked 23a handed witness; report from Antonio Arredondo to the governor of Florida, dated in 1737, relative to St. Anastasia; witness is asked whether or not this paper is a true and correct copy of the original.)

A. It certainly is, and very well done, too.

Q. After it was written, was it compared with the original?

A. Certainly it was; I used to always compare them.

Q. Who made the translation attached?

A. William Vandrell.

Q. This original Spanish paper was written where?

A. It was written in Sevilla.

(180) (Paper marked 24 is handed witness, which is a report from Governor White to his superior officer, dated 1805, relative to

the land of Dupont. Witness is asked whether or not this is a copy of the original from the Spanish archives.)

A. It certainly is: I copied it myself.

Q. Where did you copy it?

A. In the Largo at Sevilla; Mr. William Van Drell made the translation attached.

362 Cross-examination:

Q. When did you make these copies?

A. Commencing with the summer of '91 to May, '92.

Q. What was your object in making these copies.

A. I had read a great deal of the history of Florida, and historians would say there is a period of about one hundred years missing that we don't know anything about; I was getting this information for my history.

Q. How did you compare these copies with the original?

A. By reading them over.

Q. In making the comparisons of the copies with the originals did you do it by yourself or did you do it with the assistance of someone else?

A. These were done by myself; sometimes I had the assistance of a young man by the name of Juan Wall from Birmingham, England; he could not read the old Spanish, # 23c; I read it to him and he wrote it.

Q. What shape were these original records in?

A. They were in loose papers, not paper parchment; substantially done up; they were placed together.

Q. Were they originals or were they copies?

A. They were originals.

Q. What were these papers written on?

(181) A. It is a kind of paper that resembles sheepskin; it is very substantial and will bear handling.

Re-direct:

Q. This document marked 23, there appears to be two handwritings; will you state whose handwriting it is?

A. The first part is my own handwriting, and the second part is Don Juan Wall's.

Q. You say the archives are upon a peculiar kind of paper?

A. They are.

363 Q. Do you know anything about the Spanish Government, as to the use of official paper?

A. They have a kind of paper that you can pick up and look through and see the watermarks on the back.

Q. What papers were in the archives? Were they all of that character?

A. The old papers in the archives were of that character.

Q. What do you mean by old?

A. From 1700.

Q. Do we understand that you testify that all the paper from 1700, or thereabouts, was one kind of paper?

A. I do not.

Q. Now, do you profess to have any knowledge of the kind of paper that was used uniformly by the Spanish Government in official correspondence?

A. I do not profess to have any practical knowledge about the matter.
Q. Did you examine any other archives than those at Sevilla?
A. No.
By MASTER. Paper 23a never offered in evidence.

(182) DAVID L. DUNHAM, a witness on the part of the defendant, being produced and duly sworn, deposed as follows:
Q. You live at St. Augustine?
A. Yes, sir.
Q. What position do you hold?
A. Clerk of the circuit court.
Q. Lived there all your life?
A. Lived there all my life.
Q. Are you familiar with the handwriting of Peter B. Dumas?
A. Yes, sir.
Q. What position did he formerly hold?
A. Clerk of the circuit court. And I think he was clerk of the county court.
364 Q. This book, Mr. Dunham, which you hold—what does it purport to be?
A. County court minute book "B."
Q. What is the nature of the entries made in it?
A. The regular proceedings held by the court.
Q. And what other?
A. I have not examined it. As to the other matters, I suppose it contains the probate records.
Q. Does it also contain the minutes of the county court in trials of civil cases?
A. (This question was not answered.)
Q. Is this all in the handwriting of the clerk?
(Objected to by counsel for complainant on the ground that the book is the best evidence to show what it is. Sustained. Exception noted.)
A. It seems so to me; I have not examined it very carefully,
(183) except just this minute. It appears to be a minute book of trials of civil cases.
Q. Witness is handed defendant's exhibit ≠ 1 and is asked whether or not he has examined the original entry in said book, and if it is in the handwriting of P. B. Dumas and can swear that this transcript (defendant's exhibit ≠ 1) is a correct transcript of the original entry?
(Objected to on the ground that witness is not the proper custodian of the book in question, and that testimony sought is irrelevant and immaterial. Objection sustained and exception noted.)
A. Yes, sir; verbatim copy.
Q. Do you know whether the original probate papers are among the files?
A. I believe they are burned up.
365 Q. How long ago?
A. I think they were burned in '78.
Q. Did you know Benjamis A. Putnam?
A. Yes, sir.
Q. Where did he live?
A. In St. Augustine.

Q. Is he living now?
A. No, sir.
Q. Do you know what position he held?
A. Judge of the 4th judical circuit. He was surveyor-general of Florida.

WILLIAM A. VANDRELL, a witness on the part of the defendant, being duly sworn, deposed as follows:

Q. Will you state where you live?
A. I live in St. Augustine.
(184) Q. Your age?
A. 35.
Q. What country are you native?
A. I am a native of this country—New Orleans, La.
Q. Have you ever lived in any Spanish countries?
A. Mexico and Spain.
Q. Are you familiar with the Spanish language?
A. Yes, sir.
Q. Have you ever been employed as a translator?
A. Many times.

(Witness is handed defendant's exhibits numbered 13, 14, and 16, and is asked whether or not the translation attached from page 1 to 9 is a correct translation of the Spanish of these exhibits.)

A. Yes, sir.

366 (Witness is handed defendant's exhibit number 15 and is asked to state whether or not the translation which is attached to this exhibit is a correct translation of the document.)

A. It was made by me and is correct.
Q. Will you examine exhibit # 17 and state whether or not the translation attached is a correct translation?
A. It was made by me and is a correct translation.
Q. Will you examine # 18 and state whether or not the translation attached is a correct translation of the document?
A. It is.
Q. Will you examine paper # 23, in Spanish, with English translation attached thereto, and state whether or not the translation is a true and correct translation?
A. I did this work some years ago for Miss Brooks, and it is.

(185) (Defendant offers in evidence this last paper with translation, which is filed & marked "Defendant's Exhibit No. 23," purporting to be a copy of a Spanish record, and translation thereto attached.

Objected to by complainant's counsel on the ground that it is irrelevant and immaterial, and because it encumbers the record.)

(Defendant again offers the exhibits 13, 14, 15, 16, 17, 18, with translation by Vandrell attached, which translation are filed by the master.

Complainant's counsel object to defendant's exhibits 13, 14, 15, 16, 17, & 18, with their translation attached thereto as translated by Mr. Van Drell, on the ground that the same are irrelevant and immaterial.

Counsel for defendant in offering these documents states that he offers, if desired by counsel for complainant, that there be placed in the record only such parts as relate to Anastasia Island.)

367 Q. Mr. Vandrell, this paper, number 23, with the translation attached thereto, was it made by you?

A. Yes, sir.

Q. What about the pencil marks?

A. I don't know.

Q. Is this translation in ink a correct translation of the paper?

A. To the best of my knowledge, it is.

Q. Can you say whether or not it is correct?

A. I am sure it is correct.

(Witness is handed paper marked = 24 in Spanish, and is asked whether or not the paper which is attached thereto is a translation of the same and is correct.)

A. Yes, sir; that is correct.

(Counsel for defendant offers in evidence paper numbered = 24, and translation attached thereto, as testified to by Mr. Ven Drell, which is filed and marked "Defendant's Exhibit = 24," for the purpose of proving the customs in Spain in relation to the granting of land.

(186) (Objected to by complainant's counsel on the ground that it is irrelevant and immaterial and appears dated many years subsequent to grant under which complainant claims. Sustained. Exception noted.)

TIMOTHY W. BRUCE, a witness on the part of the defendant, being produced and duly sworn, deposed as follows:

Q. Where do you reside?

A. St. Augustine.

Q. How long have you resided here?

A. I have resided here 12 years; I have been here before; since I first came here it has been 27 years.

368 Q. Are you the same T. W. Bruce that made homestead entry on Anastasia Island?

A. I am.

Q. About at what time?

A. Well, it was about in the last of 1870 or the first of 1871; I can not tell just the exact time.

Q. At the time that you made homestead entry, was there anyone occupying the lands which you entered?

A. No, sir.

Q. Any of your family make entry at the same time?

A. I had a brother.

Q. What was the name of your brother?

A. Elisha A. Bruce.

Q. Where was this land, relative to yourself?

A. His was east.

Q. Was there anyone occupying these lands at the time of his entry?

(187) A. No one.

Q. Were there any other entries made at that time?

A. Mr. Amos Corbett was on the west; there was Mr. Corbett, myself, and my brother.

Q. What occupancy of Anastasia Island, if any, at that time?

A. I don't know of any.

Q. Where was Mr. Sanchez, if he was occupying any at that time in that vicinity?

A. He was occupying Fish's Island; I never was on Fish's Island; I understood he was occupying that.

Q. How long did you remain on Anastasia Island?

A. I was here about one-half of the year of 1870 and half of 1871.

Q. What kind of an entry did you make?

A. Homestead entry.

369 Q. How long after that did you come back here?

A. I came back here in '84.

Q. Do you know anything about the condition of the land in '84 when you came back, as to whether they were occupied or not?

A. That portion that I entered upon was not occupied; I don't know as I can state particularly about the rest of the island.

Q. Well, so far as you know, from 1870 to 1895 or 1896, what has been the occupancy by Mr. Sanchez of Anastasia Island?

(Question objected to by complainant's counsel.)

(188) A. Well, as far as my knowledge and belief, he only occupied Fish's Island.

Cross-examination by Mr. FLEMING:

Q. Mr. Bruce, you spoke of Fish's Island; what do you understand by Fish's Island?

A. I understand by Fish's Island, that it is a little island that is cut off from the main island by creeks, where there was an orange grove; I never was on Fish's Island, so I can not give any description of it.

Q. Does it lie on the east side of the Matanzas River?

A. Yes, sir.

Q. Is it entirely surrounded by water?

A. I am under the impression it is.

Q. Is it not a part of what is known as Anastasia Island?

A. I don't know.

Q. Did you perfect your homestead?

A. I did not.

Q. Did the other persons, whom you testified had made homestead entries, perfect theirs?

A. I don't know whether they did or not; I went away, and of course I abandoned my claim, and my brother also went away; he went to Jacksonville and stayed there a while, and he did not perfect his claim.

370 Q. You stated that Mr. Sanchez had possession of Fish's Island; do you know to your own knowledge that that was all he had possession of?

A. I stated that, as far as I knew, that he occupied only and had possession of Fish's Island.

Q. Do we understand you, that you have never been on Fish's Island?

(189) A. I think I never have been on Fish's Island; I don't have any recollection of ever being there.

Q. What do you mean when you say that there was nobody in occupancy?

A. I say that according to my belief, and what I can learn; I employed a surveyor to lay out the lands and it was supposed to be Government land and represented as State land.

Q. Were you on the land at that time?

A. I was.

Q. Did you construct any buildings on the land?

A. I did not.

Q. How many times were you on the land?

A. I could not tell you.

Q. Did you live there?

A. No, sir.

Q. Did you stay there longer than a few hours at a time?

A. I never stayed there over night.

Q. You had a residence at St. Augustine?

A. Yes, sir.

Q. And for how long a period after you made entry did you continue to claim the land?

A. I think I went away within six months after I made entry.

Q. During that time, approximately, how many times did you go on the land?

A. Probably twenty times; I could not say.

Q. It was surveyed at that time?

A. I had it surveyed.

Q. Government survey?

A. No.

Q. I mean to say had the Government survey been extended over it at that time?

371 (190) A. I don't know.

Q. Did you locate according to the Government survey at that time?

A. I understood that I did.

Q. Do you know what the numbers, fractional section, it was in?

A. I don't know; I have not got the papers; the papers are mislaid, and of course the claim, probably, has been cancelled.

Redirect:

Q. Did any of the people, who homesteaded about that time, cut wood on the lands?

A. Yes, sir.

Q. Do you know whether it was an isolated case, or whether it was general?

A. It was general.

WILLIAM VANDIKE, a witness on the part of the defendant, being produced and duly sworn deposed as follows:

What is your name?

A. William Vandike.

Q. Where do you reside?

A. St. Augustine.

Q. How long have you resided here?
A. 51 years.
Q. Are you the William Vandike who made homestead entry on Anastasia Island?
A. I did.
Q. About what time was that, do you remember?
(191) A. I think it was about '67, possibly the latter part of '67 or the first part of '68.
Q. Do you remember the description of the lands you entered?
A. I don't remember the numbers, because I lost the numbers that were given to me.
372 Q. Did you have it run out before you made the entry?
A. Yes, sir.
Q. Did you occupy it?
A. Well, not much.
Q. Was there anybody in occupancy when you made your entry?
A. No one.
Q. Were there any others?
A. Yes, sir.
Q. Do you remember who entered lands about that time?
A. There was myself, Israel McKinney, and Jack Mungen.
Q. Well, were there any others?
A. Of, yes, sir; there were others.
Q. State whether or not Mr. Gomez entered about the same time?
A. A little after.
Q. What was Mr. Gomez' business?
A. Stonecutter.
Q. Do you know anything about his entry—the cause of it?
A. To cut stone out.
Q. State whether or not any person was in occupancy of these lands that was taken up by homestead entries at that time?
A. It was all a wilderness.
Q. How far from the old light-house was your entry?
A. It was on the southern extreme, by the Green Pond.
(192) Q. What lands on or about Anastasia Island were in occupancy by Sanchez?
A. None; except on Fish's Island.
Q. How did he occupy Fish's Island at that time—in person, or how?
A. Well, he was not personally on it.
373 Q. What did he have there?
A. Well, there was a house.
Q. Do you know anything about the land on Anastasia Island called "Spanish Gardens?"
A. I don't know of my own recollections, but only what old persons told me; it was because the prisoners were sent down there to cut stone, and garden.
Q. Were these lands cultivated?
A. Partly.
Q. How far south of Fish's Island is it?
A. I should judge about five miles.
Q. Who entered the Spanish Gardens?

A. Frank Granger.
Q. Is he dead?
A. Yes, sir.

Cross-examination by Mr. FLEMING:

Q. Did you live on these lands that you entered under homestead?
A. No, sir; I only done a little work.
Q. Did you ever get a title to it?
A. No more than the numbers; I entered under a soldier's claim; I intended to live on it, but was not able to build; I never have got the final papers.
Q. Did any of these other people live on their homesteads that you spoke of?
(193) A. No, sir; I don't think they did; no more than done a little work over there; they never perfected their homestead. There was one party that done a little farming over there; I don't recollect his name; think it was one by the name of Capos; he has abandoned his place.
Q. When you say this land was unoccupied, do you mean that it was wild land—no improvements on it?
374 A. Yes, sir; the only improvements on it was a little old house. That is all the improvements that I know of, and I have been all over it.

Defendant offers in evidence original Coast Survey chart #150 to show the location and topography of Anastasia Island, which is filed and marked Defendant's Exhibit # 25.

Defendant offers in evidence from American State Papers, Duff Green's edition, vol. 3, page 743, from the report presented to Congress by the President, giving a list of Spanish governors of Florida, as follows:

Zespedez, from 1784 to '90.
Quesada, from 1790 to '96.
White, from 1796 to 1811.
Estrada (first time), from 1811 to '12.
Kendelan, from 1812 to '15.
Estrada (second time), from 1815 to '16.
Coppinger, from 1816 to '21.

"It is of some importance to remark that Zespedez, Quesada, and White were originally appointed by the King; that Estrada, being next in command, on the death of White he became temporarily his successor."

(194) Objected to by complainant's counsel on the ground that it is immaterial and irrelevant to any of the issues of this case. Sustained. Exception noted.

Defendant offers in evidence from American State Papers, Gale & Seaton's edition, vol. 5, page 669, so much of the Spanish and French ordinances, printed by authority of Congress, entitled, "Law number seven, from the Laws of Spain," as follows:

375 "In pursuance of the foregoing law (law 6), we declare that we will not give or grant to any king or other person, being out of or strangers to these kingdoms, any cities, villages, castles, hamlets, lands, or hereditaments, nor any islands belonging to these kingdoms, or to our

royal crown, nor permit or cause any to be so given or granted; and we assert it upon our true faith and royal word; and we forbid any and all our subjects to presume to give, sell, or exchange, any towns, villages, castles, lands, or hereditaments, nor any island belonging to our kingdoms, to any king, lord, or any other person, being out of or strangers to our kingdoms, under penalty of incurring our displeasure."

Objected to by complainant's solicitor on the ground that it is entirely immaterial and irrelevant to the issues in this cause, and it does not appear to have any relevancy whatever to the grant in question. Sustained. Exception noted.

The taking of testimony adjourned until further notice.

(195) At St. Augustine, Florida, May 12th, A. D. 1897, the further taking of testimony in this cause is on this day resumed before the master, H. H. Buckman, at this place.

Present: C. D. Rinehart and F. P. Fleming, esqs., representing complainant; W. W. Dewhurst and A. G. Hamlin, esqs., representing defendant.

And thereupon the defendant, to further prove the issues on its behalf, produced as a witness J. L. COLEE, who, being duly sworn, testifies as follows:

I reside at St. Augustine, Florida; my occupation is that of civil engineer; I have done surveying in this part of the country to a considerable extent, near and at St. Augustine, for the past twenty-five years; I have made surveys on Anastasia Island.

376 Q. Are you acquainted with the character of the land on Anastasia Island?

A. Yes, sir.

Q. What is the general character of the land?

A. Some is covered with oak and cedar. In tp. 7 the land is scrubby and cedar brushes. Some land in parts may be fit for farming, but very small.

(196) Q. Do you know what is called Fish's Island?

A. Yes, what I have always understood.

Q. How do you understand it?

A. There is a marshy strip of land running between what is always understood as Fish's Island, bounded with water, and there is a small creek in it, in the marsh.

Q. Does this small creek cut off Fish's Island?

A. Yes.

Q. [Map of tp. 7, being in evidence, being Ex. "I," handed witness, who is asked in relation to lots two, three, and six, in sec. 29, in said tp. and range.] Can you identify the lands which you have designated as Fish's Island?

A. I can not designate the lands as by this map.

(The witness attempts to show by the map what he understands as Fish's Island, and says the creek cutting it off is not shown in this map. Lots two, three, and six, in sec. 29, tp. 30, would be embraced in Fish's Island.)

Q. What is the character of this land?

A. Mostly fit for farming purposes.

Q. Was it ever covered by an orange grove?

A. Yes, a portion of it.

Q. As to the rest of the lands in tp. 7, range 30, has it ever been under cultivation to your knowledge?

377 (197) A. I think there has been one or two persons farming on it, on what is called Quarry Creek, as we understand it. The creek named on the map is Escotta Creek. One or two persons were on this creek of late date—that is, within the last ten or fifteen years.

Q. Do you know if these farms spoken of were occupied under Sanchez or the Furman people?

A. Not to my knowledge; to the best of my knowledge they were "squatters."

Q. Did you ever make any entry of lands on Anastasia Island yourself?

A. Yes; about twenty-five years ago and shortly after the surrender.

Q. Did others make entries about the same time?

A. Yes; but I cannot now recall their names.

Q. Was there any person in the occupancy of this land at that time?

A. No.

Q. Had there been any occupancy before this of the lands that you entered?

A. Not to my knowledge.

Q. Have you resided here in St. Augustine all the time?

A. Yes; I was born and have resided here all the time, except shortly before the war, when I was on the St. John River. I am 61 years old.

Q. During the period of your recollection what part of tp. 7, R. 30—what part of the island was occupied by Sanchez?

A. That was Fish's Island.

Q. Explain the meaning of your answer. Was it or was it not limited to Fish's Island?

A. Yes.

Q. At the time that you made your homestead entry was the limit of his occupancy Fish's Island?

378 (198) A. Still confined to Fishs Island.

Q. It is alleged that Mr. Furman and his agents have used wood for fencing and timber, and exercised acts of ownership over other lands than Fishs Island during your residence in Augustine. What has been your knowledge of the use of these lands by persons generally?

A. So far as wood is concerned, I have no idea about that, but do know that people have quarried stone and brought it away from there ever since I was a boy—can recollect that. I know that the convent called the Sisters of St. Mary was built of stone quarried and cut there—Anastasia Island. I hauled part of it to Quarry Creek for that building.

Q. Did the public confine themselves to any particular lands in quarrying stone?

(Objected to by complainants' counsel as incompetent, irrelevant, and immaterial, and not tending to establish any of the issues in this case. Overruled at this stage of proceedings. Exception noted.)

A. No, sir; they cut it wherever they found it most convenient.

Q. Was it the general reputation in this community that the public could cut stone in any part of Anastasia Island?

(Objected to on the same grounds as above. Sustained under above; the custom was an old one and never interrupted. Exception noted.)

(199) A. Yes.

Q. Did you ever hear of what were the boundaries of the King's quarries? Did you ever hear of there being any King's quarries on Anastasia Island?

A. I don't know that I have ever heard of the boundaries. All I know is that I have heard of the King's quarries.

379 Q. Can you state how much and what land you hauled the stone mentioned from?

A. The area was very small; I can not designate the section.

Q. Was stone taken generally?

A. Yes; in different places.

Q. What time did you haul this stone?

A. About twenty-five years ago.

Q. Do you know where the material was cut from that was put in the Ponce De Leon Hotel?

A. Cut from Anastasia Island; can not say what part.

Q. From how large an area?

A. I think it was about a quarter of a mile in length; probably not more than 250 ft. in width.

Q. How long were they in taking it out?

A. To the best of my recollection, about two years.

Q. Do you know how they reached the water from the place where they took the stone?

A. Yes; by a small tramway, about—between one-third and one-half mile long.

Q. Are you familiar with the road that runs north and south through Anastasia Island in tp. 7?

A. Yes; a part of it.

(200) Q. Are you familiar with that part of the road down to where it intersects the Fish road?

A. Yes.

Q. Can you locate the place from where the material for building the Ponce De Leon Hotel was taken, relative to this road?

A. My recollection is that it is a little to the north of this road from Fishs Island and to the east of the road running north and south.

380 Q. So far as your observation has gone, what is the location of the quarries relative to this road running north and south through the island?

A. On both sides of it.

Q. Define the further location of the quarries—how do the quarries lay; are there more of the quarries on the east or west side of the road?

A. More of the quarries are on the east side of the road, but not a great deal of difference.

Q. About the lands west of the quarry, or west and east of the lands that have stone on them?

A. I am unable to say.

Q. How many times have you surveyed over there?

A. Five or six times.
Q. Can you state the width of the land?
A. Yes; I guess, in places, about one-quarter of a mile wide.
Q. How far south does it run, to your knowledge?
A. Should say in the neighborhood of about four miles.
Q. Did you get wood on the lands that you went on as a homesteader?
(201) Q. Did any of the others?
A. Not to my knowledge. I think a man by the name of ; he got some over there.
Q. How much did he get, do you know?
A. I don't know; he claimed to have got some.
Q. Did you get wood on Anastasia Island?
A. Yes; off and on for about two years, I think.
Q. Is he still cutting?
A. I can't say. Harringston, the man I mean, is living on Anastasia Island. He is known as Capt. Harrington.
381 (The foregoing questions and answers as to cutting of wood are objected to as irrelevant and immaterial and incompetent to establish any question of title and are hearsay. Sustained. Exception noted.)
Q. Do you know the lands embraced in the Rodriquez grant?
A. I know that part which the light-house is on. I run that out for the Government.
Q. About how far south of the old light-house is the new light-house on this grant?
A. I don't think it stands south; more west, as near as I can recollect now; something less than a quarter of mile from the old one.
Q. Think, if you can, of the location of the old light-house and state the relative position to the new, and if you are familiar with the location of the old.
A. I was familiar with it; am not now. It fell down about 15
(202) years ago; the water undermined it, I guess.
Q. How far from the water now is the new light-house?
A. I don't think it is very far south; it may be some south, but not very much—perhaps some two or three hundred feet.
Q. Is the present shore line south of where the old light-house stood?
A. I don't know how to answer that. As the shore has encroached west it has continued its course; as the banks originally were the present shore line is nearly parallel with the old shore line; this is the reason why I can not say how far south it has cut out where the old light-house stood.
Q. This Rodriquez grant—what is the condition now of the lands themselves, are they subdivided or is it in one tract intact?
382 (Objected to, as the Rodriquez grant is not embraced in this controversy, and any testimony relating thereto is immaterial. Sustained. Exception noted.)
A. This grant is now cut up, or a portion, into town lots. Quite a little settlement there; a dozen houses, I suppose.

Q. How long has it been cut up into town lots?

A. About ten years.

Q. Do you know if the Rodriquez grant was surveyed as a private grant by the United States Government?

A. Yes.

(203) Q. Relative to the road running north and south from the light-house, how does the Rodriquez grant lay?

A. I think the road runs through a part of it.

Q. Can you tell from the map how the road from the light-house runs through this grant?

A. I can not tell from this map, Ex. I. The road runs to the east of the new light-house, and west of the old.

Q. Can you recollect your survey of the land for the light-house?

A. I can not now.

Q. Can you recollect the location of the houses on the Rodriquez grant, relative to the road running north and south on Anastasia Island?

A. But the houses are on each side of the road.

Q. Whose house is on the east side of the road?

A. I can not say.

Q. Is any house on the east side of the road?

A. Come to think about it carefully, I believe not.

Q. Are not all of the houses on the west side of the road?

A. Yes; I believe that is correct.

383 Q. Is not the new light-house east of any house on this grant?

A. I think not; I think there is a boarding house east of the new light-house, but that is not on the grant. I refer to Castle Monica. It has been so long since I did the work there that I don't recollect positively.

Q. From your recollection of the houses, what is the location of that house to the road that runs north and south; how far from the creek is the road?

A. Not far; about opposite, I think, but am not positive.

Q. Do you know anything about the F. X. Sanchez grant?

(204) A. No; that is to the south of the Rodriquez grant, but that is about all I know.

Q. Are you familiar with the lands on Anastasia Island, claimed to be owned by the St. Johns River Co.?

A. Yes.

Q. Ever surveyed them?

A. Yes.

Q. Can you locate them?

A. Yes; on the map or ground.

Q. Can you say if it is lots 3 and 8 in sec. 21, lot 1, sec. 29, W. /2 NE. /4 of SE. /4 of section 33, Tp. 7, R. 30 E., containing 328.10 acres?

A. Witness, examining the map (Ex. I), says that is the land. I surveyed them for the company at the time I surveyed the lands for the ry. & canal co., and I was working for both.

Q. What work did you do for these companies?

A. I surveyed for them, and acted as timber agent for 'while.

Q. Who is in possession of these lands?

A. I should say the ry. co. is in possession. I run it for them, and at that time there was no one living upon them.

384 Q. Are they wild or cultivated lands?

A. Wild.

Q. Are you familiar with lots 1 and two, sec. 20, in N. W. /4 and E. /2 of section 28 and lot 5, of section 32; are these lands claimed to be owned by the Fla. East Coast Canal and Trans. Co.?

(205) A. I know the lands, but can not now say that these are the lands claimed.

Q. Did you ever survey these lands?

A. I have surveyed all the lands over there claimed by the co.

Q. When did you do this surveying for the ry. co.?

A. About a year ago.

Q. Ever survey them earlier?

A. About ten years ago I located the lands for the canal co.

Q. What did you do at that time?

A. I just put stakes at the corners; the property was all marsh.

Q. At that time was anybody in possession of the lands?

A. No.

Q. Were the lands wild or improved?

A. Wild.

Q. Since, has any person other than the canal company been in occupancy or possession of these lands?

A. No; have changed owners, I think, but no one living on them.

Q. Have you ever made returns for these lands?

A. Yes, but not for the ry. co.

Q. In your connection with the business of the canal co., did you ever make returns of these lands for State or county taxes?

(Objected to as immaterial and irrelevant and that it does not tend to establish any adverse possession. Sustained. Exception noted.)

385 A. Yes.

(206) Q. When and how long ago was this, and what did you do?

A. I simply returned the lands to the assessor. I did this for three years; that was about six or eight years ago. Since then the matter has been out of my hands.

Q. Have you ever performed any other acts for the canal or ry. co.?

A. No; I never made any return for the ry. co.

Cross-examination:

Q. Are these lands that are claimed by the ry. and canal co. enclosed?

A. No; not by a fence.

Q. Are they open wild lands?

A. Yes.

Q. You have testified as to Fish's Island and that Furman and Sanchez did not occupy any lands other than Fish's Island.

A. Not to my knowledge.

Q. Do you know that they confined their occupancy or possession to that?

A. That is all I do know as to what was done in the neighborhood of the Rodriquez Grant and Fish's Island and surroundings.

Q. I understood you to testify that that part of the lands on Anastasia Island with which you are acquainted, except Fish's Island and Rodriquez Grant, is wild and uncultivated.

(207) A. Yes; the majority is. There may be one or two little patches, but they do not amount to anything.

TOGNI HUERTAS, another witness produced on the part of the defendant, being duly sworn, testified as follows:

I was born here at St. Augustine, Oct. 11th, 1810, and have lived here ever since; I was acquainted with C. M. Furman; he came from South Carolina here and married Purpall's daughter.

Q. Did you know the servants of Furman?

386 A. Yes; they lived on Fish's Island; after his wife died he took them back to South Catolina.

Q. What did he have there on Fish's Island?

A. An orange grove, fig trees, persimmons, and other things.

Q. Did you ever hear of the Spanish gardens?

A. Yes.

Q. Where is that?

A. Ten miles on the other side of the quarry south of the Fish's Island. The Spanish gardens are east of the old quarry on Anastasia Island. There was a Spanish quarry down there before the quarry opened by Tuttle to build the sea wall.

Q. The Spanish gardens are how far south of the Fish's Island?

A. By water ten miles, by land about 6 or 7.

Q. What were the Spanish gardens used for?

A. For vegetables for men at the fort.

Q. Do you know of the old Spanish quarries on that place?

A. Yes; they were used for rocks for the fort at Matanzas. This was long before my time, however, but there is the quarry there; you can see it.

Q. Where was the quarry used in your time?

A. That was east of Fish's Island.

Q. Can you remember of the quarrying of stone in this quarry?

A. Yes; I got rocks and helped to build the sea wall.

Q. How much space did you cut on?

A. I suppose about a quarter of a mile.

Q. Where were the Fish's servants at that time?

A. On Fish's Island.

Q. Were they occupying any land on which you cut out the rocks, or in that part of Anastasia Island?

A. No, sir; there was a low ground or swayle which formed the boundary of their occupancy.

387 Q. Who was the man on the land then?

A. Old Fish's servant, Harry.

Q. Did you ever go there?

A. Often, to have frolicks; I was the only fiddler.

Q. Where did the people get rocks then to build in St. Augustine with?

A. North of the old light-house on the Rodriquez tract.

Q. In any other place?

A. No; not at that time. After that Nicholos Granger bought a little piece and cut rock there.

Q. Whom did he buy from?

A. I can not say; he claimed to have a homestead entry.

(209) Q. Did he cut rock from his homestead entry?

A. Think he cut some.

Q. Did they cut rock at any other place?

A. Only certain persons, who had permits.

Q. Did you know Mr. Gomez? Did he cut any rock?

A. Yes, sir. Mr. Granger cut rock and sold and delivered it to Phillip Gormez.

Q. Did Collatio cut on his homestead entry?

A. Can't say.

Q. Do you know what land Gould claimed?

A. North of the old light-house; it went to a piece of scrub east of the old English battery.

Q. Do you know where the old lookout house was?

A. At Jack Mound.

Q. Was that encircled by a wall?

A. Well, no; it was made before there were any walls.

388 Q. What about the old light-house?

A. That was rebuilt in American times and raise about 15 feet higher; same as they did with the old governor's residence; they raise that a story.

Q. Did the Spanish keep a garrison at the old light-house?

A. Well, they kept a few soldiers there.

Q. Do you know where the old Spanish chimnies are?

A. I do. Down to Mr. Mouetries, now owned by

The witness' attention being called by counsel for deft. that that is not the place meant, says, Oh! Spanish chimnies and Spanish gardens the same; there were never any chimnies there until after the house burned down and the chimnies were left standing.

(210) Q. Do you know of the chimnies located at the quarries east of Fish's Island?

A. No; there never was any chimnies there before Mr. Tutle, of the United States Engrs., opened the quarries there.

Q. But do you remember now when you cut stone on the island?

A. Under Mr. Tutle; that was before Mr. Bennham's time.

Q. Where did Bennham quarry stone?

A. At the same quarry. In '35, when the big Indian war broke out, Gen. Hernandez carried me over there to help cut stone.

Cross-examination:

Q. Whereabouts is this quarry where Tutle cut stone?

A. East of Fish's Island.

Q. Was this on the east or west side of the road?

A. Between the road and the sea wall on the other side. There is a road north and south from the quarry on the east or west side of the road. (Witness designated the location and says on the southeast of the road.)

389 Q. Do you know the road from Fish's Island that runs across Anastasia Island from east to west?

A. That road ran right by the quarry; the quarry was on the south side of that road.

Q. How many acres did this quarry cover?

A. I can not say; there is a big hammock on the east.

Q. Was it five or six acres; was it an hundred acres?

A. I can not tell.

Q. Did Tutle cut rock from the old Spanish quarry?

A. I think that the quarry that he cut rock from was claimed
(211) by the Goverament and made by them; the old Spanish quarry is at the Spanish gardens.

Q. Did any old quarries lay north of where Tutle cut stone from?

A. Yes; where Gould cut stone. Yes, there were quarries north and east of the quarries of the crossroads.

Q. How much ground did the old Spanish quarry and gardens cover?

A. Can not say exactly; little bigger than this room; probably three or four times as big. (Room about 15x16.)

Q. Did they cover an acre?

A. Yes; suppose so; have been caving in.

Q. Do you remember when Fish lived on the island?

A. I remember the day he was killed.

Q. Was he a white man?

A. Yes.

Q. How old were you when he was killed?

A. I suppose about fifteen years old.

Q. Did he own a number of slaves?

A. Yes; he owned a family; he had a mulatto family, think, before he got married. He gave to Clarissa's mulatto family a woman to wait on them.

390 Q. After Mr. Fish died, who took charge of the slaves?

A. Furman, in South Carolina.

Q. Did they stay on Fish's Island?

A. They did up to 1860, just before secession—stayed until just before the war, and then he moved them to South Carolina.

(212) Redirect examination:

Q. Tuttle opened quarries on lands claimed by the Government?

A. Yes.

(The defendant here offers in evidence certified copies of the præcipe filed in the circuit court of the State of Florida in and for St. Johns County in the respective suits in ejectment brought by the plaintiff against the following-named persons, to wit: Catherine C. Ruggles, William D. Welsh, Frederick H. Simpson, Henry M. Stokley, Michael F. Harrington, William S. Genung, which are received, filed in evidence, and marked "Defendant's Exhibit 26.")

VENANCIO SANCHEZ, a witness produced on the part of the defendant, having been already sworn and testified in this cause, now testifies as follows:

Q. Did you know Sarah Fish, the mother of Jesse Fish?

A. No, sir; I was too young; I did not know her personally; I never knew the family personally; she came from South Carolina.

Q. Did you know the family from which she came?

A. No.

Q. Do you know of her marriage with Jesse Fish, when it was and where?

391 (213) A. No.

Q. Was she Sarah Fish, a Spanish subject?

A. Yes.

Q. Was Jesse Fish a Spanish subject?

A. Yes, that is my opinion; and I base it on my understanding from high authority, as no one could live here and exercise rights and privileges of a citizen and own and possess property unless they were Spanish subjects.

Q. Is it not a fact that old Jesse Fish, during the English occupancy, held title to the Roman Catholic Church of this place as an English subject?

A. I don't know.

Q. Did you know Richard B. Furman?

A. Yes; he was Dr. Furman.

Q. Did you know Jno. Hainsworth?

A. I don't remember.

In your former testimony, taken on deposition before Mr. Forward, you testified that you had seen the will of Sarah Fish. Was R. B. Furman, Chas M. Furman, and John Hainsworth the executors named in that will?

(Question objected to as incompetent and immaterial. Overruled if witness can answer of his own knowledge. Exception noted.)

A. I can not say, now; I was shown the will. A lawyer came here one time from South Carolina and wanted me to give up the property. I said to him, "If I had no right in it I did not want it, but if (214) I did I wanted it;" I had been to large expense about the matter, and he did not want to pay me; then I said, "I give up nothing." Then he tried to sue me but could get no lawyer to take his case. 392 Stickney was judge of the probate at that time. He called me in one day and said that a party (meaning the lawyer) wanted to sue me. I said, "Let him sue." He said, "There is a will," and showed me a will and said, "That is the will of Sarah Fish." I never knew of its existance until he showed it to me. I claim Sarah Fish had no right to make a devise of the property; all her right was a dower or interest for her lifetime. I claimed that she only had an interest for her lifetime, and then the property passed to my wife and the Fish heirs; that is my claim. I have claimed that all the time and claim it now.

Q. You claimed that you bought McGruder's, and Logan's, and Rodriquez' lands, and that they bought from the State? Have you the deeds and will you produce them?

A. Yes. Will produce the deeds if wanted or necessary.

Q. These lands were bought in the name of William J. Sanchez, your son? Did these lands embrace Fish's Island?

A. Yes; about four times as much; about 400 acres, I guess.

Q. And these lands embraced in the deeds to William J. Sanchez, and are they the same lands you testified before about before Mr. Forward, the lands of McGruder and Hopkins, Logan & Rogers?

A. Yes. But I think the Rogero and the Hopkins are the same. I think that Hopkins sold to Rogero.

Q. The possession of these lands the State conveyed to McGruder, Logan, and Rogero. Have they been held by your son?

(215) A. Ever since.

Q. Did he ever make any improvements?

A. Only keeping it up and by continually keeping up and repairing the fences. There has not been anybody on the land for some time until lately, because the man that was ove. there went away some time before we knew it. My son placed the parties there.

393 It is here agreed by the solicitors for the complainant and defendant, as to the testimony given by Venancio Sanchez on his cross-examination in his deposition taken before Mr. Forward, and filed in this case and which testimony was at that time objected to as not being a cross-examination of the witness, may be considered now as being given by the witness on behalf of the defendant, the objection to the testimony as it is not being proper cross-examination being withdrawn, but such testimony is to be considered subject to the same rules of evidence as though the witness had now testified to it again as a witness for the defendant. In other words, that as to such testimony, complainant is to have the same benefit from it as though the witness had re-testified to it as the defendant's witness.

By MASTER. Note: This agreement is made in order to save the witness repeating the same testimony in chief for the defendant at this time.

(216) The witness here states that his son got the deeds from Phillip Rogero, not Albert Rogero: Phillip was the son of Albert Rogero.

Q. Where are your son's deeds?

A. He has them, and they can be gotten from him.

Q. You say Mrs. Sarah Fish was a subject of Spain; on what ground do you base your answer?

A. From the fact that she was here during the Spanish occupancy, before the English, and that no person could enjoy property unless they were Spanish subjects; they owned property and built buildings; when the English come they left, and because I have heard persons say so. I have known Jesse Fish, senior, and Sarah Fish, and that they enjoyed all the rights. I was a child then, but from the very best authority, I know that no foreigner could hold property unless they were Spanish subjects, or continue on in the possession of it for years as they did.

394 Q. Was Mrs. Fish a Spanish subject for the same reason as you have given as her husband?

A. Yes; and because everybody said so.

Q. The lands that you spoke of as gotten from McGruder, Logan Hopkins, Rogero, have these parties obtained deeds from the State?

A. Yes.

Q. Is it true that these lands were purchased so as to get the title in shape so as to be utilized for Fishes heirs?

A. Yes; not only for that, but for what was owing to me, and to protect my wife's right as an heir.

(217) By Mr. RINEHART, complainant's solicitor:

Q. You stated a lawyer came from South Carolina to get possession of the property of Fish; do I understand you to say that he claimed for parties under the will of Sarah Fish? Do I understand you to state that you denied and resisted any such right as he claimed?

A. Yes; I might have given up however if he had paid me.

Q. Was that claim ever pres'ed?

A. No.

Q. Did you object simply because he claimed under the will of Sarah Fish?

A. No; I objected because she had no right to make a will.

It is here agreed between counsel for complainant and counsel for the defendant that the lands as described in the bill of complaint, as claimed by the Fla. East Coast Canal and Transportation Co., and the St. Johns Ry. Co., have been by them respectively returned for State & county taxes, and that they have paid the taxes thereon from the time of the date of their deeds, as set out in said bill up to now, and that the deeds from the State, under which they claim, are in due form and properly executed and that the lands as described in said deeds are the
395 lands that said companies have respectively claimed.

Defendants here announce that they rest, with the exception of introducing certain oral and record testimony which they will have ready and produce at the next hearing of this cause.

(218) And the complainants, to further prove the issues on their behalf, produce as a witness JOHN MASTERS, who, having been already sworn as a witness in this cause, now testifies as follows:

Q. Are you the same John Masters who testified before in this cause?

A. I am the same.

Q. Did you know or know of Jesse Fish, who lived on Fish's Island?

A. I knew of him; did not know him personally.

Q. Did you know the negro Clarissa Fish, who lived in this place?

A. No; I did not know her or know of her.

Q. Did you know of the colored family called Fish?

A. Yes; they were mulattoes.

Q. Did you know the mother?

A. No.

Q. Did you know the children?

A. Yes.

Q. Were they colored or white?

A. They were mulattoes.

Q. You never knew the mother?

A. No.

Q. Did these children claim to be the children of Jesse Fish? Were they understood to be legitimate in the community?

(Question objected to, as no proper foundation has been laid. Overruled. Exception noted.)

A. They were always understood to be bastard children.

396 (219) Q. Do you remember the names of any of them?

A. I have forgotten.

Q. Was it the general repute in the community as to their being bastards?

A. Yes; I think so.

Cross-examination:

Q. Do you know of your own knowledge if Fish ever recognized these as his legitimate children?

A. No.

Plaintiff, to further prove the issues on his behalf, offered A. D. ROGERO, who, being previously sworn and testified as a witness in this cause, now testifies as follows:

I am the same Rogero who testified in this case before.

Q. Did you know or know of the colored woman, Clarissa Fish, who lived here?

A. I have heard of her, but did not know here. I can not say that I have ever seen her. I have seen her children.

Q. Were they mulattoes?

A. Yes.

Q. Were they known by the name of Fish?

A. Yes.

Q. Do you remember the names of any of them?

A. No, not positively; think that one was called Joseph. They
(220) were living in town here from the time I first recollect til' about before 1836, when they went away, with a quarteroon by the name of . They left the country, supposed to have gone to San Domingo.

Q. Were they reputed to have been the children of Jesse Fish?

A. Yes; such was the reputation.

397 Q. Do you know, as to their reputation in the community, as to whether they were legitimate or illegitimate?

A. Illegitimate.

Cross-examination:

Q. Do you know if Fish ever recognized them as his children?

A. I can't say.

Q. Do you know if he ever gave them a servant to wait on them?

A. I can't say.

Q. Where did they live?

A. On St. Francis street, St. Augustine.

Q. Do you know if he gave them the house?

A. I don't know.

The plaintiff, to further prove the issues on his behalf, offered VENANCIO SANCHEZ, who, having been previously sworn and testified as a witness in this cause, now testifies as follows:

I am the same person who testified as a witness before in this cause.

Q. Did you know the colored woman who lived here in this city, who went by the name of Clarissa Fish?

(221) A. Yes; well.

Q. Was she colored?

A. I should call her so; she was black.

Q. Did she have any children here?
A. Yes; several. I knew them.
Q. Do you remember their names of any of them?
A. I don't recollect. I recall one. He was name' John. One married a Williams. One married a Clark.
Q. Was one named Mary?
398 A. I think so, but can't say exactly, except to the one named John. But their names can be found in the Catholic Church here; they were Catholics and they were christened there.
Q. Was she recognized in the community as the wife of Jesse Fish?
A. No, never.
Q. Were the children understood as his?
A. Yes.
Q. Were they understood in the community as legitimate or illegitimate?
A. As illegitimate.
Q. How long did they live here?
A. A long time, I don't exactly remember; they went away a long time ago with a Frenchman, I think, by the name of ———— to San Domingo.
Q. You have already testified that you represented the heirs of Fish in regard to the property on Anastasia Island and the slaves. State whether or not if Clarissa Fish or any of her children made any claim to the property.
A. They did not; never did.
(222) Q. Was Fish a white man?
A. Always supposed to be. I was not acquainted with the family or him personally, as I was so young. I always understood so. The father and son were named Jesse Fish.

MICHAEL MOHER, another witness, being produced on the part of the plaintiff, who, being duly sworn, testified as follows:
Q. I am a priest of the Roman Catholic Church; I reside in St. Augustine and have since Oct. 29th, 1892. My official position is assistant to the bishop of the Roman Catholic Church of this place; as such I have the custody of all the records of the church, including the records of baptisms, marriages, and deaths.
399 Q. Are you familiar with the Spanish language?
A. I can read it and translate it; I don't speak it much.
(Papers handed witness marked "Plaintiff's Exhibits N, O, P, Q, R, S, T," and witness is asked to look at these papers and state if they were copies taken from the Roman Catholic baptismal record at this place, St. Augustine.
Question objected to, as it 'as not yet been shown the method of copying such records, whether the entries were made at the time they occurred, and because it is not shown that such record is competent evidence.)
(223) Q. Is it the custom of the Roman Catholic Church to make keep records of all persons who are baptised in it?
A. It has been the custom and is a law of the Church that such records shall be kept in each parish church.
(Complainant's solic'tor again here propound the last above question objected to, which witness now answers.)

A. They are.

Q. Did you make these transcripts and the translation attached?

A. I did; I made them, compared them with the record in the church, and then made the translation which is attached to each.

Q. Are these papers which you hold correct copies in the Spanish language from the records of baptism kept in this church? And are the translations attached thereto correct translations?

A. Yes, they are; the records at that time was kept in the Spanish language.

Q. Is it the custom of the Church and was it at that time, the time these records were made, to enter on the records the parents of the child, and whether the child baptised was legitimate or illegitimate?

400 A. It is and was the custom to record the name of the child and of the mother, and when illegitimate the name of the spurious father, when known.

Q. I note in some of these papers the name of the mother is given as Clara and in some instances as Clarissa; do you know whether these are the same or not?

(224) A. Clara and Clarissa are derived from the same name, and from these records, as shown therein, I should say that it was the same.

(Plaintiff here offers in evidence these papers, which are filed and marked "Plaintiff's Exhibit N, O, P, Q, R, S, T.)

Q. Is Juan in Spanish the same as John in English?

A. The same.

Q. Who was Michael Crosby, the person whose name is subscribed to these copies of these record' in evidence, and about which you are testifying?

A. He was the assistant priest of the Roman Catholic here at the time these records were made.

No cross-examination.

It is agreed between solic'tors, plaintiff and defendant, that Friday, the 21st day of May next, shall be set by the master for the final taking of testimony in this cause before him at Jacksonville, Florida, and the master in pursuance of such agreements here sets said date for such purpose at the place named.

H. H. BUCKMAN, *Master.*

401 (225) JACKSONVILLE, FLORIDA, *May 21st, 1897.*

And now, on this day, pursuant to adjournment, the further taking of testimony is had in this case before H. H. Buckman, master.

Appearances: F. P. Fleming & C. D. Rinehart, esqs., representing the complainants; W. W. Dewhurst, esq., representing the defendant'.

Defendants introduce so much of the report of the register and receiver, acting as commissioner or confirmation of private land claims in Florida, dated December 18th, 1827, and transmitted to the State senate January 29th, 1828, on page 54, of vol. 5, Duff Green's edition American State Papers; page 403, vol. 5, Gale & Seaton's edition.

"The manner as well as the ratio in which lands were granted in East Florida, from which the practice has never varied until the administration of Coppinger, was limited and defined by fixed and settled

principles. 1st, by the general laws of the Indies, where they can be made to apply; and 2ndly, by the decrees of the King of Spain, made specially for these provinces. * * * We have examined with care and attention every law, ordinance, and decree, either general or special, which relates to the granting of public lands in this province.

"The first was by the King in person. * * *

"The second was by the intendant of Cuba. * * *

(226) "The last three modes in which the lands could be granted, and granted by the governors themselves, are the subject of this report.

"First, by the laws of the Indies. * * * Quesada then (and Cespedez, his only predecessor, made no distribution of lands) has expressly declared that his authority to grant lands in the province, as governor of East Florida, is derived from the laws of the Indies, 402 book 4, title 12th. We have seen what power is there conferred.

It is evident from the whole tenor of these 'Internal Regulations of Police,' which have already been printed by order of Congress, as well as by the quotations made above, that Quesada considered himself empowered to make these grants, not by the omnipotence of his commission as governor of Florida, but by the express provisions of the law itself. * * * Quesada nowhere claims a right to exceed the number of acres prescribed by law, nor to make a grant for other causes that 'head-rights.' His practice conformed to his rule. * * * Thus stands the law and the prac[illegible] too, until the administration of Coppinger. Until then the uniform[illegible]rse in obtaining grants was this: A memorial was presented by the individual applying, stating his wish to take the oath of allegiance, declaring the number of his family, and praying that the governor grant him a specified number of acres in a specified place. The governor sometimes required the engineer to report on the probable influence that the settlement proposed would have on the military defence of the province. Sometimes he directs that (227) the request of the petitioner be granted, saving always the rights of third person, 'until, according to the number of his family, the authorized surveyor shall measure and lay off to him the number of acres he may be entitled to.'

"The surveyor afterwards traveled around the several settlements of the province, required each individual to swear to the number of his family, and laid off to him as much land as the laws gave, in proportion to his workers. This was the practice, and this was the law. It was then necessary that the grantee should live on the land and cultivate it for ten successive years. Before the expiration of this period of ten years it became forfeited to the crown by a sale, or by an abandonment. The King himself was more than once declared that lands should not be purchased or obtained but of the King's attorney; and by an edict of Governor White, of the 12th of October, 1803, lands abandoned for two years are declared to be forfeited. Suffice it to say, by every 403 regulation, ordinance, and decree on this subject, as well as by the practice invariably pursued, the memorial of the party and the concession of the governor convey nothing more than the right of possession. It is equivalent to a permit to settle a given portion of the public lands, with a promise implied that if the party shall so settle and remain for ten years he shall become by such residence fully and legally entitled to a right of property. This first permit of the governor to settle on

the lands is called a concession, which conveys, as we have just
(228) remarked, a right of possession, defeasible by sale, by abandonment, or by death—a royal title. This is nothing more than a real (real) title in fee, as contradistinguished from the possessor's title by concession. It implies the performance of all conditions, and vests in the donee as full and complete a right to give, grant, and convey away as can be made by words. It separates the property from the royal domain. It conveys away whatever the King could give, and leaves no right of forfeiture but by treason or felony. This title is made by the governor, and not by the King, as its name would seem to import; and when limited in the extent of the grant, within the proper powers of the governors, is as full, perfect, and complete as legal ingenuity could devise. The law has declared that no lands shall be granted but on fixed conditions and in fixed proportions; and a grant in which these conditions are violated, and these proportions exceeded can convey no title and vest no right."

(Objected to as irrelevant and immaterial. Sustained. Exception noted.)

Complainants' counsel ask time for further examination by counsel for complainant' to introduce any other parts of said papers they may deem relevant.

Defendant' also offers in evidence the following portions from the report of the register and receiver, acting as commissioner, for the settlement of private land claims, dated Jan'y, 1829, and transmitted
404 by the Secretary of the Treasury to the Senate Jan'y 14th, 1839, to be found page 55, vol. 6, American State Papers, G. & S. ed.,
(229) and also on page 372, vol. 5, Duff Green's ed.

"In obedience to the law of 1828, we now transmit to you a final report on the private land claims within this district.

"Previous to the years 1790 and '91, few, if any, lands had been granted in this district by the Spanish Government. It was on the 29th October, 1790, that the first royal order was issued from the court of Madrid to the governor of this province, authorizing him to make grants of lands to a certain description of foreigners, and under certain conditions. Something was left to the discretion of the governor, and it was his duty to exercise that discretion soundly, both as to the quantity of land to be granted and the tenure by which it should be held.

"This was done by Governor Quesada * * * as early as the 20th November, 1790. * * * These, then: 1st, The grants for head rights, no matter under what law they were made; 2ndly, The grants for services under the order of 1815; and 3rdly, The British grants legalized in pursuance of the royal order of 1786, are the only grants within the province of East Florida the authority to make which can be traced to any law, ordinance, or decree of the Spanish Government."

(Objected to as irrelevant and immaterial, and subject to such other objections as may be entered after examination. Sustained. Exception noted.)

405 (230) W. W. DEWHURST, a witness on behalf of the defendant, being duly sworn, testifies as follows:

First as representative of the homestead claimants, and afterwards as owner of scrip located on lands on Anastasia Island, I have corresponded

with the Land Department of the United States relative to the title of lands on Anastasia Island for more than ten years. During that time the correspondence of the department on all matters connected with the subject of the title to lands on Anastasia Island has impressed me of the urgent desire of the department that the title to these lands should be determined by the department, and that the Fish claimants would present the evidence on which they based their claim, and bring before the department the parties claiming the land under the Fish claim.

(Objection to the witness stating how he was impressed; that would be absolutely incompetent testimony for any disinterested witness, much less a witness, who was attorney for certain of the defendants, stating what his impression was from correspondence had with the department. Sustained. Exception noted.)

WITNESS. I received by due course of mail a letter from the Commissioner of the General Land Office, dated March 31st, 1887, in reply to a letter of mine. I have seen the signature of W. J. Sparks to numerous documents emanating from the land office, and believe the signature to this letter to be his genuine signature, and the letter from the General Land Office dated March 31st, 1887, and addressed to me is
(231) offered in evidence. (Letter filed and marked "Deft's Ex. No. 30." Objected to as irrelevant and immaterial. Sustained. Exception noted.)

WITNESS. In '88 I acted as agent for the State of Florida in locating lands on Anastasia Island. This location was rejected by the local land office, and an appeal taken to the General Land Office. In that appeal the claim of Fish and Fish heirs was represented before the Gen-
406 eral Land Office by counsel, and the matter was contested for a considerable period of time by the heirs of Fish, claiming that they were owners of the land and it was not public land.

Counsel for the heirs of Fish also took proceedings before Congress during that time to secure recognition for their claim, and finally, when the decision was rendered by the Commissioner of the General Land Office, appeared by counsel before the Secretary of the Interior and contested the matter before the Secretary of the Interior, again alleging and attempting to prove the lands were not public lands, but were private lands of the heirs of Jesse Fish under the Spanish grant, as set out in the complainant's bill. That there was a final adjudication by the Secretary of the Interior on this claim; the State's claim was allowed, and I was so informed, as were all the parties concerned.

(The foregoing testimony as to what occurred in the local and general land offices and before Congress is objected to, and moved to be stricken out on the ground that the same is irrelevant and immaterial, and
(232) on the further ground that the records of such proceedings are the best evidence in relation thereto. Sustained. Exception noted. Test. Stricken. Exception noted.)

WITNESS. I had charge of the local department of the South Beach Railroad Company at the time the road was built across Anastasia Island. I attended to the proceedings for securing the right of way in the fall of '86. This is on file with the Secretary of the Interior under the act of Congress of May 3rd, '75, granting a right of way through the public lands of the United States; there were certain proofs required by law on

behalf of the applicant for right of way over the public lands, including a map of the route of the road now built through sections 17, 21, 27, 328, T. 7, R. 30. All the acts which I deemed the law required
407 under the act of March 3rd, '75, to receive the grant of the right of way from the United States over these lands had been complied with by the South Beach Railroad before the middle of '87 and a final order made in the case.

(Objected to as irrelevant and immaterial, and motion made to strike out the same on the same grounds as above stated. Sustained. Motion granted. Exception noted.)

WITNESS. Many years since I heard that the will of Sarah Fish had been probated in the probate office of St. Johns County, Florida, and that Richard B. Furman and John Haynesworth and Charles M. Furman were the executors appointed in that will.

(Objected to as irrelevant and immaterial. Sustained. Exception noted.)

WITNESS. I have a large experience in the examination of
(233) Spanish titles in Florida, especially titles to lots of land in the city of St. Augustine, and many times examined the original papers relating to the various titles to land in the Spanish archives, which are now in the custody of the surveyor-general of Florida. Mr. Alvarez, former clerk in the office under the Spanish governor, and former keeper of the Spanish archives under the American governor, lived in St. Augustine, and made an index of the archives in his charge. This index, after his death, was in the possession of his wife, and was consulted by the members of the legal profession throughout the State and others interested in the Spanish archives. Some years ago—more than ten, I think; I know it was more than ten years—I made a memorandum from the Alvarez index of the letter and number of the bundle of the archives that contained documents relating to the Fish claim for land on Anastasia Island. This document, No. 17, of bundle F, No. 373. I have examined the Spanish archives in the custody of the surveyor-general of Florida several times, and, together with the custodian, I have hunted over the various indexes and documents, and made diligent search to find any other documents relating to the lands on Anastasia Island claimed by Fish or his heirs, as having been
408 granted, or any lands that had been granted. I could find no other document relating to this claim, except document No. 17 of bundle F, No 373. I find that bundle F, 373, consisted of one hundred loose, unbound documents, folded separately and numbered
(234) from 1 to 100, entitled: "Memorials and concessions of lands." That document No. 17 consisted of 22 pages, and is entitled: "Florida ano de 1794 D. Jose Fish solicitando del Govierno sele concedan los diez mil acres de Tierri que poschia su defunto Padre del mismo nombre en el Plantage nombrado el Bergal gl remato en publica su basta."

This document so labelled appears to be mutilated by having the left-hand half of pages 16 and pages 19 entirely torn out. The document is fastened together; the sheets are fastened together by thread, and an examination of the watermarks on the paper show that those watermarks are of various designs. There seems to be no date appearing in the

watermarks, but the various designs so run through it; those in the middle of the document are not the same as those at the beginning, and I think those at the end differ. The date of the last paper in the document appears to be in 1795, and the date of the first paper of the document appears to be in 1796, and the first paper of the document, so far as I can understand it, is the preliminary paper on which all the rest are based.

The document has no file marks at all; neither do any of the documents in the bundle, and I think none in the archives, have nothing that at this time would indicate which of the papers or sheets that compose the document are genuine except the signature and flourish, which appears on certain of them, and the flourish does not appear on others; nothing that would indicate which was genuine and which spu-
(235) rious, except possibly this flourish, which follows certain signatures, and the watermark blown into the paper.

(Objected to by counsel for the complainant, and moved to be stricken out, on the ground that a certified or examined copy of the paper testified to is the best evidence as to its nature, or any portions of it, or as
409 to what it contains, and the testimony is irrelevant and immaterial. Overruled. Admitted at this stage of proceedings. Exception noted.)

WITNESS. I have examined a great many original papers in the Spanish archives, and can testify it was the practice under the Spanish government of Florida to make on the original petition filed by the claimant for lands an order; this order was signed by the governor on the back of the petition usually, although in some cases various orders preliminary could be made by other officers; but whoever made the order made it usually on the back of the original petition.

This order in the case was made on the left-hand side of the original petition or document *or document* presented, running down the page about the width of 3 1/2 inches on the left-hand side of the sheet. The originals of the petition and papers in a case were kept in the archives.

I have made diligent search of the reported cases for the confirmation of lands in East Florida, as printed in the American State papers, and have never found a case where the title to the land emanated from Morales except this claim of Fish; nor have I ever found any claim that I can recall based on concession or grant of any other officer of the Government of Spain than the governor except in two cases,
(236) where the council at Havana made grants; one was the intendant in Havana, the other was council in Havana, as near as I recollect.

(Objected to as irrelevant and immaterial. Sustained. Exception noted.)

In the proceedings of the Senate for 1841, either Senate or House docket, there is a report of Mr. Johnson of Louisiana, upon the title of the Roman Catholic Church of St. Augustine, and where the Gov-
410 ernment appointed a special commissioner to investigate. In that report was published this statement: That Jesse Fish, senior, was a British subject, and at the time of the session of Florida to Great Britain in 1763, in order to prevent forfeiture of the title of the Roman Catholic Church property to the British Crown, it was deeded to Jesse

Fish, and Jesse Fish held title to the property during the entire time that the British held possession up to 1773.

Jesse Fish, sr., according to the records of land titles in St. Johns, in St. Johns County, appears to have owned a great many lots of land in the city of St. Augustine. I have had occasion in the investigation of title to trace the title back of a great many of these lots to the ownership of Jesse Fish, sr. I find that these lots were sold at a judicial sale in 1792 of all the property left by the death of Jesse Fish, at which sale also was made a sale of the bergall or orange grove. The meaning of this word bergall is a place where the trees grow, I am advised. At the
(237) sale of these lots—city lots, town lots—formerly belonging to Jesse Fish, made under judicial sale in 1792, there seems to have been universally delivered a royal title for all lots that were bought by different individuals, sold at the sale; that one of the royal titles was delivered, as printed in vol. 4, page 486, and also 253 of Duff Green's edition of the American State Papers, which was presented to the board of commissioners by G. W. Perpall.

(All the foregoing testimony of the witness objected to and moved to be stricken out on the ground the same is irrelevant and immaterial, and the further ground that he testifies to documents, records, and written evidence, the same or certified or examined copies thereof being the best evidence. Sustained. Motion granted. Exception noted.)

411 WITNESS. I have seen at least three of these royal titles for different pieces of property in St. Augustine, and I ask to file in evidence a royal title for property sold at this sale in Spanish, with the translation attached thereto, to Bartholome Sintas, to a lot of land in St. Augustine, sold at judicial sale in 1792, at which the property now in suit was claimed by the evidence adduced on the part of the complainants to have been sold. Offered in evidence as evidence of the proceedings which were taken by the purchasers of the property at that sale to complete their purchase. The document itself is certified to by the keeper of the archives under seal, and there seems to be a translation made by Joseph Sanchez, translator, in 1845.

(238) (No objection is made to the translation as being correct, but objection to the document as irrelevant and immaterial to the issues involved in this suit. Filed and marked "Ex. No. 31." Sustained. Exception noted.)

WITNESS. In each and every case where I have examined title to lots of land formerly owned by Jesse Fish, sr., and I have examined a considerable number, when traced back there was found a judicial sale of 1792 disposing of the property formerly owned by Jesse Fish, under the authority of the Spanish Government, and that the royal title was taken by the purchaser at that sale. All of the royal titles have extended recitations substantially like that of Ex. No. 31, filed in evidence, and also royal title, which are printed in vol. 4 of the American State Papers, pages 483 and 253, the title being made in the name of the King by the governor, and with the words absolute segregation, and so recited and made in the presence of witnesses, always two, I am sure, and in many cases three.

All of the records of the U. S. district court for the district of east Florida, as I am advised, have been burned.

412 This court is the court that had jurisdiction of land cases under the act of 1828. From information derived from Alvarez index, and from other sources, I am confident that the claim of Jesse Fish to the lands on Anastasia Island was never presented to this court for adjudication.

(All the foregoing testimony after the last objection objected to and moved to be stricken out on the ground that the same is irrelevant
(239) and immaterial, and that the documentary evidence of the royal titles referred to are the best evidence in reference thereto, and that the impressions of the witness are incompetent and improper. Sustained. Motion granted. Exception noted.)

Cross-examination by Mr. FLEMING:

Q. Did you notify the complainants or any parties claiming under the Fish title of the proceedings to obtain the right of way on Anastasia Island for the South Beach Railroad?

A. I did not.

Q. Did you examine the archives in the possession of the surveyor-general to ascertain whether there were any other papers in reference to the Fish title than those in the package which you found?

A. I did. I spent two days in the office trying to find some of them.

Q. Did you find any others?

A. I could find no other relating to the title on Anastasia Island. I found the other, which is put in evidence, relating to the lands on Graham Swamp.

Defendants offer in evidence deposition, taken in Key West, of Mary English.

Complainants' counsel offer the same objections to this testimony which are set forth in the writing preceding their cross-examination.

Objection passed on in deposition.

Filed and marked "Defts. Ex. No. 32."

413 The defendant railway & canal co., through their solicitor,
(246) A. G. Hamlin, offer in evidence certified copy of deed from trustees of Internal Improvement Fund of Florida to C. F. Hopkins et al.; certified copy of deed, same grantor, to Robert D. Rogero; certified copy of deed to Robert Rogero & wife, Alexander Magruder, and William Logan; certified copy of deed, C. F. Hopkins and A. D. Rogero to Alexander Magruder & William Logan; certified copy of deed, State of Florida to W. J. Sanchez.

Filed in evidence and marked respectively "Exs. Nos. 33, 34, 35, 36, 37."

Complainant's counsel object to the introduction of these copies in evidence on the ground that they are irrelevant and immaterial and not embracing any of the lands in controversy in this suit.

Sustained. Exception noted.

Defendants here announce that they close, and further taking of testimony in this matter, if complainants shall be advised that they have any further testimony to offer, will take place either on notice or agreement of counsel.

414 (241) In the circuit court of the United States, 5th circuit, southern district of Florida.

CHAS. M. FURMAN ET AL.
vs.
H. L. MITCHELL ET AL.

JACKSONVILLE, FLA., *July 6th, 1897.*

The further taking of testimony in this case is this day resumed upon agreement between all the parties.

Present: F. P. Fleming, esq., solicitor for complainant; W. W. Dewhurst, esq., solicitor for defendant.

Defendant offered in evidence (this is to go in under date of January 19th, the last taking of testimony on the part of the defendant) so much of vol. 5, American State Papers, Gale & Seaton's edition, pages 750 and 751.

From page 750:

"ST. AUGUSTINE, FLA., *October 2nd, 1818.*

"Let the present notary certify the conditions under which the Government at different epochs granted the lands of the province
(242) according to what appears in his archives, and also annex a copy of each of the titles of proprietyship which have been issued in each class.

(Signed) "COPPINGER.
"SAAVEDRA."

415 From page 751, certificate, as follows:

"I certify and attest the conditions prescribed by this Government for grants of lands, to which the decrees of the 2nd inst. placed on the proceedings refers, are the same which appear in the foregoing title, delivered in favor of Din Juan McQueen, dated the 12th March, 1804, which conditions subsisted in all their force until 1815, when the governor, Kenderlen, altered them at his discretion, granting lands under the single circumstance that when the grantee proves that he has cleared them, built houses, fences, and other things necessary for the improvement of a plantation, the title of proprietyship should be delivered to them. * * *

(Signed) "JUAN DE ENTRALGO,
"*Notary of Gov't.*"

Translation of Exhibit # 23 wants the signature of Governor Cespedes.

Complainant objects to the testimony offered by the defendant on the ground that the same is immaterial and irrelevant.

Sustained. Exception noted.

(243) *Testimony in rebut'al.*

The complainant, to further prove the issues on their behalf, introduced CHAS. F. HOPKINS, who, being duly sworn, testified as follows:

Q. You have already been sworn and testified in this case, and have stated that you resided in St. Augustine many years. State whether or not you are familiar with Anastasia Island.

A. I am.
Q. What bounds Anastasia Island on the west?
A. The Matanzas River.
Q. What bounds it on the east?
A. Atlantic Ocean.
Q. Have you ever heard of a piece of land designated as Fish's Island?
A. I have never seen it designated on any map; I have heard of a place called Fish's Island.
416 Q. Whereabouts is this piece of land that you have heard called Fish's Island?
A. It is on the Matanzas River in township #7.
Q. Is it not the piece of land on which the Fish's homestead stood?
A. It is.
Q. State whether or not Fish's Island is separate and distinct from Anastasia Island.
A. It is not.
Q. Is it not a part of Anastasia Island?
A. It is.
Q. Is it entirely separated from Anastasia Island by water?
(244) A. There is a marsh on the east side between what they call Fish's Island and the highlands on the west side.

Cross-examination:

Q. In your last answer you said on the west side; on the west side of what?
A. On the west side of the highlands on Anastasia Island.
Plaintiff offered in evidence certified copy of the Fish record from the surveyor-general's office of Florida, which is filed in evidence, marked "Exhibit U."
Defendant objects to the same on the grounds, first, that it is not in rebut'al; second, it being a mere concession, it is not evidence; third, that it appears on the face of the record that it is mutilated; fourth, that the record is a collection of loose sheets, without any file marks, and the pages of the record show that final orders were made by Gov. Quisada, while the additional sheets show that orders were made and are signed by persons not having any authority, or shown to have any authority; fifth, because as to the final orders in the case, complainants have shown no power or authority in the officer who purported to make the orders, and for another one, is that the original petition, or what
417 purports to be an original petition, is dated 1796, while the final order, or what purports to be the final order, of Juan Morales is dated in June, 1795, and for other and further grounds appearing upon the face of the record.
Overruled. Exception noted, as to not being in rebut'al. Master allows same filed now in his discretion.

(245) H. M. FRITOT, another witness produced on the part of the complainant, being duly sworn, deposed as follows:

Q. Where do you reside?
A. In Jacksonville.
Q. How long have you resided in Jacksonville?

A. About twenty-seven years.
Q. Where did you reside prior to the time you came to Jacksonville?
A. In the island of Cuba; at least I resided in Patterson, N. J., before I came here.
Q. How old were you when you moved from Cuba?
A. About thirty.
Q. Are you familiar with the Spanish language?
A. Yes; I still understand Spanish and English.
Q. That is the language you spoke up to the time you came here?
A. Yes.
Q. Are you familiar with the English language?
A. Yes.
Q. Paper handed witness marked Ex. ≠ , and is asked in what language the same is written in.
A. It is in the Spanish language.
Q. State whether or not you made translation of that paper.
A. I did.
Q. Have you that translation in your possession?
A. I have.
418 Q. State whether or not the paper which you hold in your hand is a true and correct translation of the Spanish of Exhibit ≠U.
(246) A. It is.
Q. Made by you?
A. Made by myself.
Q. In your handwriting?
A. In my handwriting.
(Paper offered in evidence marked "Complainant's Exhibit ≠V.")

Cross-examination:

Q. Mr. Fritot, in your translation of this paper, the style of the paper, in Spanish, you translated the word "conceda;" how did you translate that in your translation?
A. I translated it "grant."
Q. Does it not mean "concede?"
A. Concede or grant.
Q. This word that you have translated "govenor?"
A. That means "govenor."
Q. Translation of the sentence on back of page twenty, between parenthetical lines in pencil, verbally at request of defendant's solicitor is as follows: "And is granted to him in terms above expressed, given to him its possession by the present notary, who is employed to do so."
Q. Would it be called as correct a translation of the word "conceda," to concede, that there "is conceded to him," or "a concession is made to him?"
A. I looked it up in the dictionary and it said "grant."
Q. Answer my question; would it not be as correct?
(247) A. In my translation I said "grant." You see, of course, I tried to be correct; I looked up most every word so as to be sure.
Q. What dictionary have you?
A. I could not tell you now.
Q. Is it a dictionary for the Spanish language as comprehensive as our Webster's is with the English language?
419

(Objection on part of complainant.)

A. It is a very large dictionary.

Q. How many definitions were given to the word "concede?"

A. I don't know.

Q. How many do you think?

A. Several.

Q. Well, were the' 50 or 100, or how many?

A. I don't know.

Q. Would not the correct translation of the verb "concede" be, "to 'concede?"

A. It would be; I don't see any difference between "concede" and "grant."

Q. Well, you translated the words "en los terminos," three words, "upon the terms set forth," does it not mean upon the "conditions set forth?"

A. That means the "terms set forth."

Q. Will you explain what you mean by the words, "terms set forth?"

(Objected to by complainant's solicitor on the grounds that it
(248) incompetent to have the construction of the witness upon what the language means other than as to whether or not it is a correct translation of the Spanish terms used.

Objection sustained. Exception noted.)

Q. Will you state any other meaning of the words "en los terminos?"

A. It may mean in the "words," or "terms" set forth.

Q. Can it not mean upon the "condition above set forth?"

A. Yes, sir; it can mean that also.

Q. Before you translated this had you seen the translation made in the American State Papers?

A. Yes, sir.

Q. In that translation they used "in the terms set forth," did they not?

A. I believe they did.

420 (249) (To be inserted in the testimony of July 6th, 1897, taken before the special master.)

W. W. DEWHURST, being duly sworn, testifies as follows:

I have examined carefully the original papers in the surveyor-general's office relating to the claim of Jose Fish, about which I have previously testified; the copy presented by the complainant, marked "Exhibit U," is the copy of the document in the archives concerning which I testified May 21st. It has been so copied by the surveyor-general as to conform in the manner of its execution with the original papers, that is to say, that the paging of the copy correspond with the paging of the original; that where the blank pages and torn pages appear in the copy the same are blank and torn in the original, and that the same words appear upon the pages of the copy as appear upon the corresponding pages of the original; the relative position of the signature was both the same upon the copy and original. I have compared a copy, furnished me by the surveyor-general, and am, therefore, prepared to testify as I have.

Q. You spoke of torn pages, explain what you mean by that.

A. In the copy, after page ≠ 15, appears a blank one-half sheet which is part of the same sheet and would naturally be page ≠ 16 upon the blank if it was not torn; and after page ≠ 18, also, there follows a blank

one-half sheet; each of them are the same sheet of paper; in the original it is the same; in the original there is duplicate sheet of paper, on the front and back of which is the writing, and upon the last half of that sheet of paper there is no writing and the left-handed half of the
(250) sheet is torn off and in the same part, in page 18, there is duplicate sheet of paper, on which, calling it four pages and two
421 leaves, there is writing upon the first two pages and no writing upon the last two pages or the second leaf. My best recollection is, in the original papers, most of the sheets are duplicate sheets, four pages to a sheet.

Q. In the original papers, is the part torn off of the half sheet, as to which you have testified, torn longitudinally as shown by the copy?

A. Just as it appears in the copy.

Q. There remains about one-half of the original one-half sheet page?

A. Yes; and that is blank, as appears in the copy.

This, with the exhibits filed, concludes the testimony and proceedings before the master in this cause previous to the argument.

H. H. BUCKMAN, *Master.*

(Endorsed:) Charles M. Furman et al. vs. Henry L. Mitchell, gov., et al. Record of proceedings and testimony before master. Filed September 24th, A. D. 1897. E. O. Locke, clerk, by Louis Starke, D. C. H. H. Buckman, master.

422 1.

Furman vs. Mitchell. 12/2/96. Filed in evidence. H. H. Buckman, master.

C. M. Furman to State of Florida, Dr.

To State tax for the year 1856	$23.00
To county tax, 50c on State	11.50
	$34.50

Received payment.

PAUL SABATA,
Sheriff & ex-Off. Tax Assessor and Collector, St. Johns County.

St. Augustine.

2.

Furman v. Mitchell. Filed in evidence Dec. 2, 1896. H. H. Buckman, master.

Mr. C. M. Furman, Dr.

For State taxes for the year 1855	$54.45
For county taxes, 50 per cent on State tax	$27.23
	$81.68

Received payment.

JAMES A. MICKLER,
Sheriff and ex-Off. Tax Assessor and Collector, St. Johns County.
By PAUL AMAN.

3.

Furman v. Mitchell. Filed in evidence Dec. 2, 1896. H. H. Buckman, master.

Charles M. Furman to the State of Florida, Dr.

To State taxes for the year 1854	$54.45
To county tax, at fifty per cent on State tax	27.23
	$81.68

Received payment.

JACOB MICKLER,
Sheriff and ex-Off. Tax Assessor and Collector, St. Johns County.
By R. CANOVA.

423

4.

Furman v. Mitchell. Filed in evidence Dec. 2, 1896. H. H. Buckman, master.

Mr. Charles Furman to State of Florida, Dr.

1853.

To State tax on 27 slaves; 10,000 acres 3rd rate land, $500; town lots	57.20
"county tax, at 50 p. ct. on State	28.60
	$85.80

Recd. payment of Mr. V. Sanchez.

R. B. CANOVA,
Sheriff & ex-Officio Tax Assessor and Collector for St. Johns County.
By G. E. STAMBIAS.

5.

Furman v. Mitchell. Filed in evidence Dec. 21, 1896. H. H. Buckman, master.

Charles Furman to the State of Florida, Dr.

To State taxes for the year 1852	$55.55
To county tax, at fifty per cent on State tax	27.78
	$83.33

Received payment of V. Sanchez, esq.

R. B. CANOVA,
Sheriff and ex-Officio Tax Assessor and Collector of St. Johns County.

6.

Furman v. Mitchell. Filed in evidence Dec. 2, 1896. H. H. Buckman, master.

Charles Furman to the State of Florida, Dr.

To State taxes for the year 1851	$55.33
To county tax, at twenty-five per cent on State tax	13.83
	$69.16

Received payment.

R. B. CANOVA,
Sheriff and ex-Officio Tax Assessor and Collector of St. Johns County.

424

7.

Furman v. Mitchell. Filed in evidence Dec. 2, 1896. H. H. Buckman, master.

Charles Furman (by V. Sanchez) to the State of Florida, Dr.

To State taxes for the year 1850	$53.68
To county tax, at 25 per ct. on State tax	13.42
	$67.10

Received payment.

R. B. CANOVA,
Tax Collector of St. Johns County.

8.

Furman v. Mitchell. Filed in evidence Dec. 2, 1896. H. H. Buckman, master.

Charles Furman, esq. (V. Sanchez, agt.), to the State of Florida, Dr.

To State taxes on 23 slaves, @ 55 cts., for year 1849	$12.65
To one improved, valued @ $500	1.10
To 10,000 acres 3rd rate land, @ $4\frac{1}{8}$ mills per acre	41.25
Amt. State taxes	$55.00
To county tax, @ 25 per cent on State tax	13.75
	$68.75

Received payment.

R. B. CANOVA,
Tax Assessr. & Colr. of St. Johns County.

9.

Chas. Furman (V. Sanchez) to the State of Florida, Dr.

To State taxes for the year 1848 ..... $60. 84
To county tax, at twenty-five per cent on State tax 15. 20

$76. 05

Received payment.

MATTHEW SOLOMAN,
Tax Assessor and Tax Collector of St. Johns County.

Furman v. Mitchell. Filed in evidence Dec. 2, 1896. H. H. Buckman, master.

425 Tax collectors must use this receipt only for taxes of 1889.
September, 1889. W. D. Barnes, comptroller.

State of Florida, St. Johns County. Tax receipt No. 2219 for 1889.

Received of unknown for State and county taxes for 1889 on real and personal property, as follows:

Value of personal ..... $——— Real $10.70

	Personal page	Real page	
General revenue	$———	$4.87	
Immigration tax	$———	$00	
State school tax	$———	$1.07	
Total State tax	$———		$5.94
County revenue	$———	$4.01	
County school tax	$———	$4.28	
County road tax	$———	$1.07	
....	$———	$4.28	
Total county taxes, personal	$———		Real $13.64
Aggregate taxes, personal .	$———		Real $19.58

A. E. LOPEZ, *Tax Collector.*

Dated May 19, 1890.

Description of lands paid on—	Sec.	T.	R.	Acres.
Lot 1 in	26	8	30	75
" 2 "	"	"	"	48
" 1 "	27	"	"	50
" 2 "	"	"	"	42
" 3 "	"	"	"	34
" 2 "	35	"	"	44
" 3 "	"	"	"	34
" 4 "	"	"	"	18
	"	"		

When space is not sufficient for description of land, continue on back of receipt, or on attached slip.

10.

Furman v. Mitchell, filed in evidence Dec. 2, 1896. H. H. Buckman, master.

426 **Tax collectors must use this receipt only for taxes of 1889.**
September, 1889. **W. D. Barnes, comptroller.**

State of Florida, St. Johns County. Tax receipt No. 2219 for 1889.

Received of unknown for State and county taxes for 1889 on real and personal property, as follows:

Value of personal ..... $——— Real $———

	Personal page..... ———	Real page ———	
General revenue.....	$———	$———	
Immigration tax.....	$———	$———	
State school tax	$———	$———	
Total State tax	$———		$———
County revenue.....	$———	$———	
County school tax.....	$———	$———	
County road tax.....	$———	$———	
....	$———	$———	
Total county taxes, personal	$———		Real $———
Aggregate taxes, personal .	$———		Real $———

———— ————, *Tax Collector.*

Dated May 19, 1890.

Description of lands paid on—	Sec.	T.	R.	Acres.
Lot 1 in	24	7	30	6
" 2 "	"	"	"	6
" 3 "	"	"	"	6
" 4 "	"	"	"	6
" 5 "	"	"	"	6
" 6 "	"	"	"	36
" 7 "	"	"	"	71
" 8 "	"	"	"	6
" 9 "	"	"	"	6
" 10 "	"	"	"	6
" 1 "	3	8	30	36
" 2 "	"	"	"	6
" 3 "	"	"	"	6
" 4 "	"	"	"	34
" 5 "	"	"	"	32
" 6 "	"	"	"	6
" 7 "	"	"	"	6

When space is not sufficient for description of land, continue on back of receipt, or on attached slip.

11.

Furman v. Mitchell, filed in evidence Dec. 2, 1896. H. H. Buckman, master.

427 **Tax collectors must use this receipt only for taxes of 1889.**
September, 1889. **W. D. Barnes, comptroller.**

State of Florida, St. Johns County. Tax receipt No. 2219 for 1889.

Received of unknown for State and county taxes for 1889, on real and personal property, as follows:

Value of personal ..... $——— Real $———

	Personal page ..... ———	Real page ———	
General revenue.....	$———	$———	
Immigration tax	$———	$———	
State school tax	$———	$———	
Total State tax.....	$———		$———
County revenue.....	$———	$———	
County school tax	$———	$———	
County road tax.....	$———	$———	
....	$———	$———	
Total county taxes, personal	$———		Real $———
Aggregate taxes, personal.	$———		Real $———

———————————, *Tax Collector.*

Dated May 19, 1890.

Description of lands paid on—	Sec.	T.	R.	Acres.
Lot 8 in	10	8	30	22
" 1 "	15	"	"	22
" 2 "	15	"	"	59
" 3 "	"	"	"	59
" 4 "	"	"	"	59
" 5 "	"	"	"	41
" 6 "	"	"	"	60
" 7 "	"	"	"	50
" 8 "	"	"	"	48
" 1 "	22	"	"	56
" 2 "	"	"	"	38
" 3 "	"	"	"	25
" 4 "	"	"	"	64
" 5 "	"	"	"	33
" 6 "	"	"	"	51
" 7 "	"	"	"	36
" 8 "	"	"	"	39

When space is not sufficient for description of land, continue on back of receipt or on attached slip.

12.

Furman v. Mitchell, filed in evidence Dec. 2, 1896. H. H. Buckman, master.

428 Tax collectors must use this receipt only for taxes of 1889.
September, 1889. W. D. Barnes, comptroller.

State of Florida, St. Johns County. Tax receipt No. 2219 for 1889.

Received of unknown for State and county taxes for 1889 on real and personal property, as follows:

Value of personal ..... $——— Real $———

	Personal page	Real page	
General revenue	$———	$———	
Immigration tax	$———	$———	
State school tax	$———	$———	
Total State tax	$———		$———
County revenue	$———	$———	
County school tax	$———	$———	
County road tax	$———	$———	
.....	$———	$———	
Total county taxes	$———		Real $———
Aggregate taxes, personal	$———		Real $———

——— ———, *Tax Collector.*

Dated May 19, 1890.

Description of lands paid on—	Sec.	T.	R.	Acres.
Lot 8 in	3	8	30	56
" 1 "	4	8	30	40
" 2 "	"	"	"	38
" 3 "	"	"	"	36
" 4 "	"	"	"	35
" 5 "	"	"	"	33
" 6 "	"	"	"	40
" 7 "	"	"	"	34
" 8 "	"	"	"	40
" 1 & 2 "	9	"	"	78
" 1 "	10	"	"	31
" 2 "				40
3				39
4				65
5				58
6				52
7				62

When space is not sufficient for description of land, continue on back of receipt, or on an attached slip.

13.

Furman v. Mitchell, filed in evidence Dec. 2, 1896. H. H. Buckman, master.

429 **Tax collectors must use this receipt only for taxes of 1889.**
September, 1889. **W. D. Barnes, comptroller.**

State of Florida, St. Johns County. Tax receipt No. 2219 for 1889.

Received of unknown for State and county taxes for 1889 on real and personal property, as follows:

Value of personal	$———		Real $2.80
Personal page.....	———	Real page ———	
General revenue.....	$———	$128	
Immigration tax	$———	$00	
State school tax	$———	$28	
Total State tax.....	$———		$156
County revenue	$———	$100	
County school tax.....	$———	$112	
County road tax.....	$———	$28	
.....	$———	$112	
Total county taxes	$———		$352
Aggregate taxes, personal.	$———		Real $508

A. E. LOPEZ, *Tax Collector.*

Dated May 19, 1890.

Description of lands paid on—	Sec.	T.	R.	Acres.
Lot 1 in	17	7	30	40
" 2 "	"	"	"	70
" 3 "	"	"	"	96
" 4 "	"	"	"	80
" 1 "	21	7	"	12
" 2 "	"	"	"	17
" 4 "	"	"	"	45
" 5 "	"	"	"	32
" 6 "	"	"	"	40
" 7 "	"	"	"	46
" 9 "	"	"	"	40
" 10 "	"	"	"	40
" 1 "	22	"	"	20
" 1 "	27	"	"	13
" 4 "	"	"	"	39
" 5 "	"	"	"	32

When space is not sufficient for description of land, continue on back of receipt, or on attached slip.

14.

Furman v. Mitchell, filed in evidence Dec. 2, 1896. H. H. Buckman, master.

430 **Tax collectors must use this receipt only for taxes of 1889.**
September, 1889. **W. D. Barnes, comptroller.**

State of Florida, St. Johns County. Tax receipt No. 2219 for 1889.

Received of unknown for State and county taxes for 1889 on real and personal property, as follows:

Value of personal.....	$———		Real $4.00
Personal page.....	———	Real page ———	
General revenue.....	$———	$1.82	
Immigration tax.....	$———	$.04	
State school tax.....	$———	$.40	
Total State tax.....	$———		$2.26
County revenue	$———	$1.42	
County school tax	$———	$1.60	
County road tax.....	$———	$.40	
.....	$———	$1.60	
Total county taxes.....	$———		$5.02
Aggregate taxes, personal.	$———		Real $7.28

A. E. LOPEZ, *Tax Collector.*

Dated May 19, 1890.

Description of lands paid on—	Sec.	T.	R.	Acres.
Lot 7 in	29	7	30	0
" 8 "	27	"	"	0
" 9 "	27	"	"	0
" 10 "	"	"	"	0
" 11 "	"	"	"	0
W. ½ of NW. ¼	28	"	"	0
SE. ¼	"	"	"	10
Lot 4 in	19	"	"	0
" 5 "	"	"	"	0
" 1 "	32	"	"	0
" 4 "	"	"	"	0
E. ½ of NE. ¼	33	"	"	0
NW. ¼ in	"	"	"	10
SW. ¼ of "	"	"	"	10
E. ½ of SE. ¼ in	"	"	"	0
SE. ¼ of SE. ¼ "	"	"	"	0

When space is not sufficient for description of land, continue on back of receipt, or on an attached slip.

15.

Furman v. Mitchell, filed in evidence Dec. 2, 1896. H. H. Buckman, master.

431 United States circuit court, southern district of Florida.

The President of the United States of America to R. H. Colcock, notary public of the State of South Carolina, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority diligently to examine, upon her corporal oath or affirmation, before you to be taken, and upon the interrogatories and cross-interrogatories as may be propounded to Ann E. Furman, a witness on the part of the complainants, at the time and place of which due notice shall be given the defendants or their solicitors in a certain cause now pending and undetermined in the circuit court of the United States of America for the fifth circuit and southern district of Florida, wherein Charles M. Furman, in his own right and as administrator de bonis non cum testamento annexo of the estate of Charles M. Furman, deceased, et als., are complainants, and Henry L. Mitchell, governor, et als., are defendants.

And we do hereby require you, R. H. Colcock, before whom such testimony may be taken, to reduce the same to writing, and, together with the notice given of the taking of such testimony, to close it up under your hand and seal and directed to the clerk of the circuit court of the United States for the fifth circuit and southern district of Florida, at the city of Jacksonville, as soon as may be convenient after the execution of this commission, and that you return the same when
432 executed as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in said circuit & district, this seventh day of December, A. D. 1895, and of our Independence the one hundred and twentieth year.

[SEAL.] N. A. GREENING,
Deputy Clerk of the Circuit Court of the U. S. for the Fifth Circuit and Southern District of Florida.

433 In the United States circuit court, southern district of Florida.
In chancery.

CHARLES E. FURMAN, ETC., ET AL.
vs.
HENRY E. MITCHELL, ETC., ET AL.

Please take notice that the complainants herein will take the testimony of Ann E. Furman, of McPhersonville, South Carolina, who is aged and infirm, before R. H. Colcock, esquire, a notary public of the State of South Carolina, appointed by the court as a commissioner, who is not of counsel nor interested in this cause, at the office of the said notary public in McPhersonville, State of South Carolina, on the 23rd day of

December, 1895, at 11 o'clock a. m., and thereafter from day to day as the taking of the depositions may be adjourned; and such testimony will be so taken in accordance with the provisions of sections 863, 864, and 865 of the Revised Statutes of the United States, and of the 70th equity rule.

FLEMING & FLEMING,
BISBEE & RINEHART,
Solicitors for Complainants.

To—

Messrs. Parrott & Hamlin, solicitors for the Florida Coast Line Canal & Transportation Co. and the St. Johns Railway Co.

W. W. Dewhurst, esq., solicitor for Henry L. Mitchell, governor of the State of Florida; W. D. Bloxham, comptroller; C. B. Collins, treasurer; L. B. Wombwell, commissioner of agriculture of said State, as the board of trustees of the internal improvement fund of the State of Florida.

John A. Henderson, defendant, and to

Horace S. Cummings, defendant.

434 Service accepted and copy of above notice received.

W. W. DEWHURST,
Solicitor for Henry L. Mitchell et al., Trustee, &c.

PARROTT & HAMLIN,
Solicitors for St. Johns Ry. Co. & Fla. Coast Line Canal & Trans. Co.

JOHN A. HENDERSON in propria persona.

DISTRICT OF COLUMBIA, *ss:*

Albert F. Flint, being duly sworn, deposes and says: That, on the 13th day of December, 1895, he personally delivered to Horace S. Cummings, at the office of the said Cummings, No. 1416 F street northwest, in the city of Washington, in the said District, a copy of the foregoing notice.

ALBERT F. FLINT.

Subscribed and sworn to before me this thirteenth day of December, A. D. 1895.

HENRY W. REED,
Notary Public.

DISTRICT OF COLUMBIA, *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, the same being a court of record, do hereby certify that Henry W. Reed, esq., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof and acknowledgment, a notary public in and for said District, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgments and
435 proofs of deeds or conveyances for land, tenements, or hereditaments, and administer oaths in said District. And further, that

I am well acquainted with the handwriting of such notary public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of Washington, D. C., the 13th day of December, A. D. 1895.

[SEAL.] J. R. YOUNG, *Clerk*,
By M. A. CLANCY, *Assistant Clerk*.

436 UNITED STATES OF AMERICA,
State of South Carolina, County of Hampton, ss:

The examination of a witness de bene esse, beginning on the 23rd day of December, A. D. 1895, on behalf of the complainants, before me, W. H. Colcock, a notary public in and for the State and county aforesaid and commissioner to take depositions in the cause hereinafter stated, at my office in McPhersonville, State of South Carolina and county of Hampton, in a certain suit now depending and undetermined in the circuit court of the United States *court* for the southern district of Florida, in chancery, wherein Charles M. Furman, in his own right and as administrator de bonis non cum testamento annexo, and Boliver B. Furman and Alester G. Furman are complainants, and Henry L. Mitchell, governor of the State of Florida, et als., are defendants.

ANN E. FURMAN, a witness produced in behalf of the complainants, being first duly sworn, deposes and says as follows (the said testimony being taken down and written in the handwriting of the commissioner, B. H. Colcock):

My name is Anne E. Furman. I reside in McPhersonville, Hampton County, in the State of South Carolina. I was eighty-three years old on the 20th day of March, 1895, and am now quite infirm, not being able to move about except by the use of a rolling chair, caused by an accidental fall three years ago, which deprived me of the use of my lower limbs.

Charles M. Furman, of Clemson College, South Carolina, is my nephew, son of my brother, the late James C. Furman. Alester G. Furman, of Greenville, South Carolina, and Bolivar B. Furman, of Summer-
437 ville, South Carolina, are my grandnephews. I was personally acquainted with Sarah Warner Fish, the mother of Jesse Fish, otherwise called Joseph Fish (who will hereafter be referred to as Jesse Fish), who held a grant of St. Anastasia Island, in St. Johns County, Florida, from the Spanish Government. She was a frequent inmate in the house of my father, Revd. Richard Furman, of Charleston, S. C., and corresponded regularly with different members of the family. I remember her distinctly in my early childhood. She, Sarah Warner Fish, was the niece of my grandfather Furman, the daughter of his sister, Sarah Furman, who married Mr. Warner, of New York.

I do not remember seeing Jesse Fish, but I know he was the son of Sarah Warner Fish, because it was a matter of common knowledge in my family. He lived with his mother on St. Anastasia Island, and was killed there by lightning. He was often alluded to by the elder members of my family, who were on terms of great intimacy with his mother.

Also by the servants of the Fish family, who came into the possession of my brother, Charles M. Furman, of Charleston, S. C., through his marriage with Jesse Rosalin Perpall. "Nancy," one of these servants, has described to me the circumstances of her "Mass Jesse's" death. She was on the island at the time it occurred. There was also a beautiful piece of memorial embroidery done by my brother's wife, dedicated to her "beloved uncle Jesse Fish," which was in my possession and was lost when the house in which I lived was burned, about thirty years ago. There was also lost at that time books of plantation accounts in Jesse Fish's handwriting, very nicely executed by him, when he was living on St. Anastasia Island and planting there.

438 I do not recall the year of Jesse Fish's death, but think it was in 1815 or 1816; of this date, however, I am not at all certain. Jesse Fish was never married, and at his death his mother was living and visited my father's house after her son's death. Jesse Fish's mother, Sarah Warner Fish, died in 1824 of country fever. I am not certain whether it was on St. Anastasia Island or in St. Augustine, but think it was in St. Augustine. My brother, Richard Furman, M. D., was living in St. Augustine at the time, and was her physician. She left surviving her one granddaughter, Jesse Rosalie Perpall, the child of her daughter, Phœbe Fish, who had married William Gabriel Perpall.

Jesse Rosalie Perpall's mother, Phœbe Fish Perpall, died sometime before Sarah Warner Fish, and Jesse Perpall was brought up by her grandmother, and was the only living descendant of the latter at the time of her death in 1824. My brother, Charles M. Furman, married Jesse Rosalie Perpall in April, 1826, and she died in August, 1827, leaving surviving her one child, a son, William Gabriel Furman. Charles M. Furman survived his wife and died in 1872. W. Gabriel Furman, the only child of Jesse Rosalie Furman and Charles M. Furman, was born in January, 1827, and died in October, 1836. As stated, my brother, Charles M. Furman, died in 1872, in Charleston, S. C., in the month of July; he never married a second time and left no issue of his body living.

Sarah Warner Fish, as previously shown, was a first cousin to my father. As far back as I can recollect I know the fact that Sarah Warner Fish lived on St. Anastasia Island, and I know this fact because as previously stated there was frequent interchange of visits between her family and my father's. She and her son, Jesse Fish, had a beautiful home in which they lived on Anastasia Island up to the time of

439 his death, and she continued to occupy afterwards as long as she lived. She kept up a regular correspondence with my father's family and sent us frequently barrels of oranges from her grove on the island. She had two granddaughters, Jesse Rosalie and Susanna (the only children of her daughter, Phœbe Perpall), who she was having educated at Bethleham, Pa., and she always visited at my father's house on her way to and from a visit to these grandchildren. And on their graduation in 1819 she brought them to Charleston, S. C., to visit us. I have a perfect recollection of this visit. Mrs. Fish then returned with her granddaughters to St. Anastasia Island, and Susanna Perpall died there a year or two later, leaving her sister and grandmother surviving her. I was an inmate for years of my brother Charles M. Furman's household, and know as a fact that after the death of my sister-in-law, Jesse

Rosalie, my brother, Charles M. Furman, had entire direction of the said Anastasia property; his father-in-law, Mr. Perpall, looked after the property for him and corresponded with him regularly and always alluded to the property as being my brother's. Dr. Simmons was my brother's agent and after him Mr. Venancio Sanchez. The taxes were regularly paid by my brother on the property, the orange groves were cultivated, but the trees were killed by the severe winter of 1835. In course of time they were renewed, but the fruit was impaired by an insect. My brother also experimented in planting cotton and tobacco, and for this and other purposes kept negro slaves on the island before the war. He held important public offices in this State, being president of the "Bank of the State" for many years, and therefore could not give the property his personal attention, although I know that he visited the said Anastasia property often, and particularly remember a visit he made to same in 1852.

440 My nephew, Charles M. Furman, and grand-nephew, Bolivar B. Furman, have an interest in this island under the will of my brother, Charles M. Furman.

ANN E. FURMAN.

STATE OF SOUTH CAROLINA,
County of Hampton, ss.

I, Richard H. Colcock, a notary public in and for the county and State aforesaid, duly commissioned, qualified, and authorized to administer oaths and to take and certify depositions, and a commissioner appointed by the circuit court of the United States for the southern district of Florida, in chancery, as shown by the commission hereto annexed, do hereby certify that in pursuance of said commission and the annexed notice issued and served in a cause depending in the said court, wherein Charles M. Furman, in his own right and as administrator de bonis non cum testamento annexo of the estate of Charles M. Furman deceased, and Bolivar B. Furman and Alester G. Furman are complainants, and Henry L. Mitchell, governor of Florida, and others are defendants, I was attended at my office in McPhersonville, Hampton County, in the State of South Carolina, on the 23rd day of December, A. D. 1895, at 11 o'clock a. m., by Alester G. Furman, in his own behalf and as of counsel for the other complainants in the matter of this deposition, and also by Anne E. Furman, the witness named in said notice, who was of sound mind and lawful age. The said witness was by me first cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, and
441 was by me carefully examined, and she thereupon testified as above shown, and her testimony was by me reduced to writing in the presence of the said witness and from her statements, and the same was subscribed by the said witness in my presence, and was taken at the time and place in the annexed notice specified.

I further certify that the reason for taking said deposition was, and the fact is, that the witness is aged and infirm; that I am neither of counsel nor attorney to either or any of the parties to said suit, nor am I interested in the event of said cause, and that it being impracticable for me to deliver said deposition with my own hand into the said court for which it was taken, I have retained the same for the purpose of being sealed up

and directed with my own hand, and speedily and safely transmitted to the said court for which it was taken and to remain under my seal until there opened.

In witness whereof I have hereunto set my hand and affixed my official seal this twenty-third day of December, A. D. 1895.

[SEAL.] RICHARD H. COLCOCK,

Notary Public in and for the County of Hampton, in the State of South Carolina, and Commissioner of the United States Circuit Court for the Southern District of Florida to take the testimony of Ann E. Furman de bene esse.

(Endorsed:) Filed in evidence in case of Furman et al. v. Mitchell et al., Nov. 24, 1896. H. H. Buckman, master; marked B.

442 (Endorsements on envelope of transmission:)

Charles M. Furman et al. vs. Henry L. Mitchell, governor, et al. Depositions of Ann E. Furman, witness for complainant. "B." Clerk of the circuit court of the United States, fifth circuit and southern district of Florida, Jacksonville, Florida. Richard H. Colcock, notary public in and for the county of Hampton, in the State of South Carolina, and commissioner of the United States circuit court for the southern district of Florida to take the testimony of Ann E. Furman de bene esse.

Received and filed December 27/95. N. A. Greening, D. C.

Opened by order of court, Aug. 20/96, J. Otto, dy. clerk.

Filed in evidence case Furman et al. v. Mitchell et al., this 24th of November, 1896. H. H. Buckman, master.

Received by express and filed Dec. 27, 1895. E. O. Locke, clerk.

443 In the name of God, Amen.

I, C. M. Furman, of Charleston, do make and declare this to be my last will and testament.

I desire my estate to be kept together if practicable, and worked, and from the nett income the sum of seven hundred and fifty dollars be paid annually to my two sisters, Maria and Ann, during their lives, and after the death of either to the survivor during her life. The surplus income of my property & monies, bonds, stocks, may be disposed of for the payment of liabilities; also my real estate in the city of Charleston. (The lot in Whims Court is not mine, but is held in trust for the heirs of Lloyd.) After payment of debts, if the income be sufficient after the payment of the annuity to my sisters, I direct the surplus income of my property to be paid to my nephew Charles until the sum he receives amounts to seven hundred and fifty dollars. Should the income of my estate exceed fifteen hundred dollars (the amount of the two annuities), the surplus to be divided annually into five equal portions, one to be paid to my sister Maria, one to my sister Ann, one to my nephew Charles, one to my nephew Richard K. Furman, and one to the family of my nephew Irvine (deceased), to be paid to his widow. The above arrangement to continue during the life of the survivor of my sisters. After the death of the survivor, it is my property be divided as follows: One-half to my nephew Charles, one-fourth to my nephew R. K. Furman, and the remaining fourth to my grand nephews, Bollivar and Irvine (the children of my nephew Irvine). I have authorized my nephew

Charles to sell the plantation in Sumter district and appropriate the proceeds to his own use. I confirm the same. I also authorize the survivor of my sister to charge my estate, by will, with the sum
444 of three thousand dollars. The provisions made for my sisters in this will I intend to be in satisfaction of funds of their' which have come into my hands, which amount to six thousand five hundred dollars, but if it become necessary for them to elect between the two, it is my desire that they shall not be bound to make their election for five years (i. e., till the expiration of five years from my death), and that any payments of the annuity they may receive shall not be charged against them except so far as to keep down the interest on the six thousand five hundred dollars. I authorize my executors to sell and make titles for real estate. I nominate and appoint

In witness whereof I have hereunto affixed my hand and seal this twenty day of June, 1868.

C. M. FURMAN. [SEAL.]

Signed, sealed, and delivered to be his last will and testament by the testator in our presence, who, at his request and in his presence, subscribed our names as witnesses thereto.

JAS. B. CAMPBELL,
R. B. RHETT, Jr.,
WADE HAMPTON.

Probate in common *town*, before George Buist, esquire, judge of probates, Charleston County, on the second day of July, A. D. 1872, on the testimony of James B. Campbell, one of the subscribing witnesses, and on the twenty-third day of July, A. D. 1872, granted letters of administration, with will annexed, to John A. Carew, of Charleston, broker. On the sixteenth day of December, granted adm'n. d. b. n., with will annexed, to C. M. Furman.

445 THE STATE OF SOUTH CAROLINA,
County of Charleston:

Present, Honorable George Buist, probate judge for the county of Charleston.

Personally appeared James B. Campbell, a subscribing witness to the annexed instrument of writing, purporting to be the last will and testament of Charles M. Furman, and saith that he was present and did see the said instrument of writing duly executed by the said Charles M. Furman. And deponent further saith that the said Charles M. Furman at the time of executing the said instrument of writing was, to the best of deponent's knowledge and belief, of sound and deposing mind, memory, and understanding, and that said James B. Campbell (the deponent), and R. B. Rhett, jr., and Wade Hampton, in the presence of each other and of the said Charles M. Furman and at his request, signed their names as witnesses to the due execution of the same.

(Sgd.) JAS. B. CAMPBELL.

Sworn and subscribed to before me this eighth day of July, in the year of our Lord one thousand eight hundred and seventy-two.

(Sgd.) GEORGE BUIST,
Probate Judge.

Upon due consideration of the above testimony, and being satisfied with the sufficiency thereof, it is adjudged and decreed that the said instrument in writing, purporting to be the last will and testament
446 of Charles M. Furman, be admitted to probate in common form. It is so ordered.

(Sgd.) GEORGE BUIST,
Probate Judge.

JULY 8th, 1872.

I do solemnly swear that this writing contains the true last will of the within-named Charles M. Furman, deceased, so far as I know or believe, and that I will well and truly execute the same by paying first the debts and then the legacies contained in said will, as far as h goods and chattels will thereunto extend and the law charge me, and that I will make a true and perfect inventory of all such goods and chattels. So help me God.

(S'g'd) JNO. E. CAREW.

Sworn and subscribed to before me this 23rd day of July, 1872.

(S'g'd) GEORGE BUIST, *P. J.*

STATE OF SOUTH CAROLINA,
Charleston County. In the probate court:

I, H. L. Bolgen, judge of the probate court of Charleston County, and State of South Carolina, and ex officio clerk of said court, do hereby certify the foregoing papers to be and contain a true and correct exemplification and copy of the last will and testament of C. M. Furman, and also copy of affidavit and the order probate of said will, late of said county, deceased, on file and of record in this court.

447 In testimony whereof I have hereunto set my official signature as judge and ex officio clerk of said court, with the seal of said court affixed, this twenty-third day of August, in the year of our Lord one thousand eight hundred and ninety-five.

[SEAL.] H. L. P. BOLGEN,
Judge and ex officio Clerk of the Probate Court of Charleston County, South Carolina.

STATE OF SOUTH CAROLINA,
Charleston County:

I, H. L. P. Bolgen, judge of the court of probate of Charleston County, and State of South Carolina, do hereby certify that there is no clerk of said court and that none is required by law, and that the judge of said court is ex officio clerk of said court; and I do further certify that the foregoing attestation of said judge as ex officio clerk of said court is in due form.

In testimony whereof I have hereunto set my official signature as judge, with the seal of said court attached, this twenty-third day of August, 1895.

[SEAL.] H. L. P. BOLGEN,
Judge of the Probate Court of Charleston County, State of South Carolina.

I, M. R. Cooper, county judge of St. Johns County, State of Florida, do hereby certify that the foregoing will and the probate thereof and the certificate thereto attached were by me duly recorded in Book No. 8 of Records of Letters, Wills, Orders, &c., on pages 471, 472, & 473 in the office of the said county judge in and for St. Johns County, Florida, on the 1st day of October, 1895.

448 Witness my hand and official seal this 8th day of October, 1896.

W. R. COOPER, [SEAL.]
County Judge.

(Endorsed:) State of South Carolina, Charleston County. In the probate court. Exemplified copy of the last will and testament of C. M. Furman, deceased. Filed for record this 1st day October, A. D. 1895. M. R. Cooper, judge, per D. L. Dunham. Recorded in Book No. 8, Records, Letters, Wills, Orders, &c., pages 471, 472, & 473, this 14th day of October, 1895. Records St. Johns Co., Fla. M. R. Cooper, co. judge, per D. L. Dunham. Filed in evidence in case Furman et al. v. Mitchell et al., Nov. 24, 1896. H. H. Buckman, master. Marked C.

449 THE STATE OF SOUTH CAROLINA,
Charleston County:

By William E. Vincent, esquire, probate judge, to Charles M. Furman:

Whereas Charles M. Furman departed this life, leaving in full force and effect his last will and testament, which has been admitted to probate and record in the court, and letters of administration, with will annexed, granted to John E. Carew, who has since departed this life, by means whereof the power of granting the administration of the estate and effects of the said Charles M. Furman, deceased, to me is manifestly known to belong. And whereas Charles M. Furman hath made suit to me to grant him letters of administration of the estate and effects of the said Charles M. Furman, deceased, with his will annexed:

I therefore, in consideration of the premises and that the goods and chattels, rights and credits of the said Charles M. Furman, deceased, may be well and truly administered, converted, and disposed of according to law, do hereby give and grant unto the said Charles M. Furman (in whose fidelity in this behalf I very much confide) full power and authority by the tenor of these presents to administer and faithfully dispose of the goods and chattels, rights and credits of the said Charles M. Furman, deceased, according to the effect and tenor of the said will. And first to pay the debts of the said Charles M. Furman, deceased, which he did owe at the time of his death; afterwards the legacies contained in, specified by the said will, as far as such goods and chattels, rights and credits will thereto extend and the law requires, being first sworn on the Holy Evangelists of Almighty God to make a true and perfect inventory thereof,

450 and to exhibit the same into the probate court, in order to be recorded, on or before the sixteenth day of February next ensuing. And I do ordain, depute, and constitute you, the said Charles M. Furman, administrator of all and singular the goods and chattels, rights and credits of the said Charles M. Furman, deceased, with his will annexed.

Given under my hand and seal this sixteenth day of December, in the year of our Lord one thousand eight hundred and eighty-two and in the 107th year of American Independence.

[SEAL.] W. E. VINCENT, [L. S.]
Probate Judge.

Probate court. Recorded, Book B, page 272.

STATE OF SOUTH CAROLINA,
Charleston County. In the Probate Court:

I, H. L. P. Bolger, judge of the probate court of Charleston County and State of South Carolina and ex officio clerk of said court, do hereby certify the foregoing papers to be and contain a true and correct exemplification and copy of the letters of administration issued to Charles M. Furman on the estate of Charles M. Furman, late of said county and State, deceased, on file and of record in this court.

In testimony whereof I have hereunto set my official signature as judge and ex officio clerk of said court, with the seal of said court affixed, this 9th day of October, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.] H. L. P. BOLGER,
Judge and ex officio Clerk of the Probate Court of Charleston County, South Carolina.

451 STATE OF SOUTH CAROLINA,
Charleston County:

I, H. L. P. Bolger, judge of the court of probate of Charleston County and State of South Carolina, do hereby certify that there is no clerk of said court, and that none is required by law, and that the judge of said court is ex officio clerk of said court; and I do further certify that the foregoing attestation of said judge as ex officio clerk of said court is in due form.

In testimony whereof I have hereunto set my official signature as judge, with the seal of said court attached, this 9th day of October, 1896.

[SEAL.] H. L. P. BOLGER,
Judge of the Probate Court of Charleston County, State of South Carolina.

(Endorsed:) State of South Carolina, Charleston County. In the probate court. H. L. P. Bolger, probate judge. Exemplified copy of letters of administration issued to Charles M. Furman. Filed in evidence case Furman et al. v. Mitchell et al., Nov. 24, 1896. H. H. Buckman, master. Marked D.

452 This indenture, made the 19th day of September, in the year of our Lord one thousand eight hundred and eighty-nine, between Julia R. Furman, of the county of ~~Greenville~~ Sumter and the State of South Carolina, of the first part, and Alester G. Furman, of the county of Greenville and the State of South Carolina, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of one dollars, lawful money of the United States of

America, to her in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released and by these presents do grant, bargain, sell, and release unto the said party of the second part, and to his heirs and assigns forever, all her right, title, and interest in and to a certain tract of land located on the Island of Anastasia, in the county of St. John and State of Florida, and known as the Fish grant, containing ten thousand acres more or less.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the above-described premises, and every part and parcel thereof with the appurtenances.

To have and to hold, all and singular, the above-mentioned and described premises, together with the appurtenances, unto the said
453 party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part have hereunto set her hand and seal the day and year first above written. The word "Greenville" being first erased and the word "Sumter" interlined.

JULIA R. FURMAN. [SEAL.]
[SEAL.]

Signed, sealed, and delivered in the presence of—
THOS. E. RICHARDSON.
J. M. MIMS.
South Carolina.

STATE OF FLORIDA, *County of Sumter:*

On this day personally appeared before me Julia R. Furman, to me well known as the person described in, and who executed the foregoing deed, and acknowledged that she executed the same for the purpose therein expressed: Whereupon it is prayed that the same may be recorded.

In witness whereof I have hereunto affixed my hand and seal this nineteenth day of September, A. D. one thousand eight hundred and eighty-nine.

[NOTARIAL SEAL.] THOS. E. RICHARDSON, [SEAL.]
A Notary Public in and for the State of South Carolina.

(Endorsed:) Quitclaim deed from Julia R. Furman to Alester G. Furman. Dated 19th Sept., 1889. Filed in the office of the clerk of the circuit court of the county of St. John, State of Florida, on the 16th day of Sept., A. D. 1895, and recorded in Book Y. Y., on page 126/127. B. F. Olennins, clerk circuit court. Filed Nov. 24, 1896, H. H. Buckman, master. Marked E.

454 This indenture, made the 5th day of August, in the year of our Lord one thousand eight hundred and eighty-nine, between Irvine K. Furman, of the county of Jackson and State of Missouri, of the first part, and Alester G. Furman, of the county of Greenville and State of

South Carolina, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one dollars, lawful money of the United States of America, to me in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and his heirs and assigns forever, all of his interest in St. Anastasia Island, lying and being in the county of St. Johns and State of Florida, described as follows:

Bounded on east by the Atlantic Ocean and on the west by the Matanzas River. Containing six thousand five hundred acres more or less, being an undivided interest in all of said island embraced in the "Spanish grant" to Jesse Fish, jr.

Together with all and singular the lands, tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower and right of dower, separate estate, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with
455 the appurtenances: to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his own proper use, benefit, and behoof forever.

And the said party of the first part, Irvine K. Furman, for his heirs, executors, and administrators, does covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that the said party of the first part, Irvine K. Furman, at the time of the sealing and delivery of these presents, is lawfully seized in fee simple of a good, absolute, and indefeasible estate of inheritance, of, and in, all and singular the above granted, bargained, and described premises, with the appurtenances thereto, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter peacefully and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, his heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same are now free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature and kind soever.

And the said party of the first part, for himself and his heirs,
456 the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part and his heirs, and against all and every person or persons whomsoever lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

IRVINE K. FURMAN. [SEAL.]
[SEAL.]

Signed, sealed, and delivered in presence of us.

A. L. SHERMAN.
ROBT. COOMBE.

STATE OF MISSOURI, *County of Jackson:*

On this day personally appeared before me Irvine K. Furman, to me well known as the person described in and who executed the foregoing deed of conveyance, and acklowledged that he executed the same for the purpose therein expressed, whereupon it is prayed that the same may be recorded.

In witness whereof I have hereunto affixed my hand and seal this 5th day of August, A. D. 1889.

A. W. FARRAR, [SEAL.]
Notary Public.

457 STATE OF FLORIDA, *County of St. John:*

Be it remembered, that on this 17th day of Sept., A. D. 1895, I, B. F. Oliveros, clerk of the circuit court in and for said county, have duly recorded the foregoing deed in the public records of said county & recorded in Book XX, pg. 278/79.

In witness whereof I have hereunto set my hand and the seal of said court this day and year above written.

B. F. OLIVEROS, [SEAL.]
Clk. Cl. C.

(Endorsed:) Warranty deed from Irvine K. Furman to Alester G. Furman. Dated 5th August, 1889. Filed in the office of the clerk of the circuit court of the county of St. Johns, State of Florida, on the 16th day of September, A. D. 1895, and recorded in Book XX, page 278. B. F. Oliveros, clerk circuit court. "F." Filed May 24, 1896, marked F. H. H. Buckman, master.

458 United States circuit court, southern district of Florida.

The President of the United States of America to William F. Forward, a notary public of the State of Florida, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority diligently to examine, upon his corporal oath or affirmation, before you to be taken, and upon the interrogatories and cross-interrogatories as may be propounded to Venancio Sanchez, a witness on the part of the complainants, at the time and place of which due notice shall be given the defendants or their solicitors, in a certain cause now pending and undertermined in the circuit court of the United States of America for the fifth circuit and southern district of Florida, wherein Charles M. Furman, in his own right and as administrator de bonis non

cum testamento annexo of the estate of Charles M. Furman, deceased, et als. are complainants and Henry L. Mitchell, governor, et als. are defendants.

And we do hereby require you, William F. Forward, before whom such testimony may be taken, to reduce the same to writing and, together with the notice given of the taking of such testimony, to close it up under your hand and seal and directed to the clerk of the circuit court of the United States for the fifth circuit and southern district of Florida, at the city of Jacksonville, as soon as may be convenient after the execution of this commission, and that you return the same when executed as above directed, with the title of the cause endorsed on the envelope of the commission.

459 Witness the honorable Melville W. Fuller, Chief Justice *Justice* of the United States, at the city of Jacksonville, in said circuit and district, this seventh day of December, A. D. 1895, and of our Independence the one hundred and twentieth.

[SEAL.] N. A. GREENING,
Deputy Clerk of the Circuit Court of the United States for the Fifth Circuit and Southern District of Florida.

460 In the United States circuit court, southern district of Florida.
In chancery.

CHARLES L. FURMAN, ETC., ET AL.
vs.
HENRY L. MITCHELL, ETC., ET AL.

Please take notice that the complainants herein will take the testimony of Venancio Sanchez, residing in the city of St. Augustine and State of Florida, who is aged and infirm, before William F. Forward, esquire, a notary public of the State of Florida, appointed by the court as a commissioner, who is not of counsel nor interested in this cause, at the office of the said notary public in St. Augustine, State of Florida, on the 30th day of December, 1895, at 11 o'clock a. m., and thereafter from day to day as the taking of the depositions may be adjourned, and such testimony will be so taken in accordance with the provisions of sections 863, 864, and 865 of the Revised Statutes of the United States and of the 70th equity rule.

FLEMING & FLEMING,
BISBEE & RINEHART,
Solicitors for Complainants.

To

Messrs. Parrott & Hamlin, solicitors for the Florida Coast Line Canal & Transportation Co. and the St. Johns Railway Co.

W. W. Dewhurst, esq., solicitor for Henry L. Mitchell, governor of the State of Florida; W. D. Bloxham, comptroller; C. B. Collins, treasurer; W. B. Lamar, attorney-general; L. B. Wombwell, commissioner of agriculture, of said State, as the board of trustees of the Internal Improvement Fund of the State of Florida.

John A. Henderson, defendant, and to Horace S. Cummings, defendant.

COPY BOUND CLOSE IN CENTER

461 Service accepted and copy of above notice received.

W. W. DEWHURST,
Sol. for Hy. L. Mitchell et al., Trustees, &c.
PARROTT & HAMLIN,
Sols. for St. Johns Ry. Co. and Fla. Coast Line Cana. & Trans. Co.
JOHN A. HENDERSON,
In Propria Persona.

DISTRICT OF COLUMBIA, *ss:*

Albert F. Flint, being duly sworn, deposes and says: That on the 13th day of December, 1895, he personally delivered to Horace S. Cummings, at the office of the said Cummings, No. 1416 F street northwest, in the city of Washington, in the said District, a copy of the foregoing notice.

ALBERT F. FLINT.

Subscribed and sworn to before me this thirteenth day of December, A. D. 1895.

HENRY W. REED, *Notary Public.*

DISTRICT OF COLUMBIA, *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, the same being a court of record, do hereby certify that Henry W. Reed, esq., whose name is subscribed to the certificate of the proof of acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof and acknowledgment, a notary public in and for said District, duly commissioned and sworn and authorized by the laws of said District to take the acknowledgments and proofs of deeds or conveyances for land, tenements, or hereditaments, and administer oaths in said District. And further, I am well acquainted with the handwriting of such notary public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In witness where' I have hereunto set my hand and affixed the seal of said court, at the city of Washington, D. C., the 13th day of December, A. D. 1895.

J. R. YOUNG, *Clerk.*
[SEAL] By M. A CLANCY, *Assistant Clerk.*

462 UNITED STATES OF AMERICA,
State of Florida, County of St. Johns, ss:

The examination of a witness de bene esse, beginning on the 30th day of December, A. D. 1895, on behalf of the complainants, before me, Wm. F. Forward, a notary public in and for the State and county aforesaid, and commissioner to take depositions in the cause hereinafter stated, at my office in St. Augustine, State of Florida and county of St. Johns, in a certain suit now depending and undetermined in the circuit court of the United States for the southern district of Florida, in chancery, wherein Charles M. Furman, in his own right and as administrator de bonis no' cum testamente annexo, and Bolivar B. Furman and Alester G. Furman, are complainants, and Henry L. Mitchell, governor of the State or Florida, et als., are defendants.

There were present F. P. Fleming, one of the complainants' solicitors, and W. W. Dewhurst, solicitor for Henry L. Mitchell and others,

trustees of the International Improvement Fund, and A. G. Hamlin, solicitor for the East Coast Canal and Transportation Company and the St. Johns Railway Company.

VENANCIO SANCHEZ, a witness produced on behalf of complainants, being first duly sworn and being interrogated by said solicitors as follows, deposed and made answer to such interrogations as follows:

Interrogatories by F. P. Fleming, one of complainants' solicitors:

Q. Where do you reside?

A. In St. Augustine.

Q. State your age and present physical condition.

A. Age, eighty-six years. I am infirm, particularly latterly.

463 Q. How long have you resided in St. Augustine?

A. All my life; was born April 13t', 1809.

Q. Are you familiar with the body of land being an island lying easterly and southerly of St. Augustine, known as Anastasia Island?

A. Yes; am not prepared to say how long exactly, some 45 or 46 years since I've had charge of it.

Q. Explain how you have had charge of it and your connection with the property.

A. I happened to marry in the same family with Mr. Charles M. Furman. I am therefore connected with him by marriage. I married Gabriel W. Perpall's daughter by second wife, and Charles M. Furman married his daughter by a first wife. Charles M. Furman claimed an interest in it. I had charge of it for him and the other heirs of Fish.

Q. How did Charles M. Furman claim title to the property? Under whom did he claim?

A. I presume he claimed under the heirs of Fish; that was before my time. Under the will he was put in possession of the property—I mean the will of the mother of Jessie Fish.

Q. Is Charles M. Furman, to whom you refer, living or dead?

A. Dead.

Q. Do you remember about the time he died?

A. I do not; it was a good many years ago,

Q. Was it or not about about 1872?

A. I think it was about that time. I think it was about 1870 or 1872. I don't know positively.

Q. Were you familiar with what was known as the Fish homestead on this island?

A. They looked upon the whole island as the homestead. I had possession about forty-odd years before my son was born, and he is about forty-five years.

464 Q. Did you or not in this possession represent the persons claiming title under Jesse Fish?

(Objected to by A. G. Hamlin, esq., as leading and also contrary to testimony already given by witness in which he stated that he did not have original personal knowledge of the fact.)

Question withdrawn.

Q. Whom did you represent in this possession of the Island?

A. Charles M. Furman and the heirs of Jesse Fish. I paid the taxes many a year.

Q. Were you well acquainted with Charles M. Furman in his lifetime?

A. Perfectly so; perfectly so.

Q. State how it was you came to represent, as agent, Charles M. Furman and other heirs of Jesse Fish in the matter of the possession of Anastasia Island.

A. From the fact that I was connected with the family. He married a Perpall, I married a Perpall; he went with me to the island and put me in charge and requested me to supervise it, which I did to his entire satisfaction.

Q. State what you did in the matter of the charge of this property in connection with this agency, and as to reporting to Mr. Furman from time to time.

A. I did everything that was necessary—attended to wants of the servants, saw they lacked for nothing, paid the taxes, furnished everything that was necessary.

Q. Whose servants do you refer to?

A. The servants of the estate of Jesse Fish, left by his mother at the time of the death of the old lady.

Q. Did you have charge of these servants?

A. Yes; I had charge of all of them.

465 Q. What did they do?

A. They did just as they pleased until I told him if he did not put a stop to it he would have large bills to pay.

Q. Whom did you tell?

A. I told Mr. Furman, and he told me to do just as I pleased and it would be all right.

Q. State whether or not the servants referred to worked upon the home place or the Fish estate; and if so, what sort of work they did.

A. Yes; the place where the buildings were. They were planting, killing time; I could not, as I received and charged no pay for my services, afford to lose my time. Many were young servants. Two men I hired out, and the income from them went to pay the expense of the place.

Q. What sort of planting was done on the place?

A. A little corn and pumpkins, but not much of anything.

Q. Was there an orange grove on the place?

A. Yes; an old dilapidated grove of sour trees which I had budded and paid for it.

Q. What buildings, if any, were on this property when you took charge of it?

A. One two-story stone dwelling, one stone kitchen, one stone dairy, one stone well, good water now, half a dozen or more servants' buildings.

Q. Was the place fenced when you took charge of it?

A. There was a dilapidated fence, but not in good repair. I had a good fence put there some little while after I took charge. I was continually repairing dams for the purpose of draining the interior land; when a canal was cut I dammed the canal to keep it from overflowing fresh water and salt water both.

466 Q. Whose place was this where the buildings were?

A. The homestead of Jesse Fish. All these old buildings were destroyed during the war, since which time I have erected several wooden buildings; they are on the place now.

Q. Are you still in charge of this property?

A. Yes, sir.

Q. Have you had parties living on the property constantly?

A. Yes; except just now the man quit. I am trying to get another man to go on it.

Q. Where did the parties who reside on this place obtain fuel?

(Objected to by A. G. Hamlin, esq., as leading and immaterial, because until recently there has been no statute or law making the obtaining of fuel on property evidence of possession.)

A. On the place; wet and dry wood in the hammock and driftwood in the marshes; a great deal of driftwood; no green wood cut, but all dry wood. I gave them leave to do that, but not to cut green wood unless necessary. I don't know that any green wood was ever cut.

Q. State whether or not there was any timber gotten off this property for fencing.

(Question objected to by A. G. Hamlin, esq., for same reasons as above.)

A. Some few posts, nothing else; nothing else could be got there that I know of. Some few of the posts used were got there, but most of them were carried over there from the main land.

Q. State, as near as you can, the location, if you know, of what is or was known as the quarries, or Kings Quarries, on Anastasia Island.

(Question objected to because it is not the best evidence, and witness is not shown to be properly qualified.)

467 A. The road leading from the dwelling going east until you come to the crossroad leading south and continue on a hundred yards or two east, then about same distance north to a pile of stone, and from thence go straight to the light-house, that was known as the King's quarries, extending north and east to the water from this line—that is, the line from this pile of stones to the light-house. The old light-house when I was a boy, stood a half mile or more from the water. The water has encroached very much on these grounds, being up to where the old light-house stood.

Q. State, if you know, whether or not Charles M. Furman ever defended a suit brought to recover any part of Anastasia Island.

A. He did.

Q. About what time?

A. Soon after the war; the suit was defended by Col. Sanderson.

Q. Do you remember what part of the island was included in this suit?

(Mr. A. G. Hamlin objects to the last two questions and the last answer on the ground that it is not the best evidence, and because the testimony is too indefinite and uncertain to prove any fact.)

A. The whole front of the homestead, running some distance back.

Q. State any other matter or thing within your knowledge pertaining to the issues in this cause affecting or beneficial to any of the parties to said suit.

A. I know nothing further.

468 Cross-examination by W. W. DEWHURST, esq.

Q. State whether or not part of this Anastasia Island is known as Fisher's Island.

A. Anastasia Island is known as Anastasia. A part opened by Fish was called Fish's homestead. Fish owned the whole island except what was reserved.

Q. How do you know he owned it?

A. I know it because I have read the American State Papers and because I heard he owned it. It was always considered Mr. Fish's homestead except what was reserved for the Government.

Q. Is it not true that many people in this community designate the lands, involved in the suit concerning which you have testified as having been defended soon after the war, as Fish's Island?

A. Yes; the little island is called Fish's Island, but this suit involved these and other lands besides. Fish's Island included the front of the lands sued for. Some people call the front of these lands. McGruder and Logan sued for Fish's Island.

Further hearing in this cause is adjourned until the 6th day of February, 1896.

FEBRUARY 6TH, 1896.

Cross-examination of the witness by Mr. W. W. Dewhurst continued by agreement.

Q. About what date did you have the fences built or repaired, as stated in your direct testimony?

A. When I first took charge, I repaired the fence. Soon after the war I had a splendid new fence built. I have always kept up the fence for this last forty-odd years. The fence is on the same place now.

469 Q. In regard to the canal which you cleared out, is it inside or outside the enclosure?

A. Inside. There is an old canal outside, or a large ditch.

Q. Between the cultivated lands and the mainland is there a low swail?

A. Yes; running north and south, and across this there was a dam at the north end and a dam at the south end running east and west to keep off the tide water; otherwise the land could not have been cultivated with any satisfaction. These dams existed when I took charge of the property, and I subsequently kept them in repair.

Q. What do they estimate to be the area of the lands bounded eastwardly by this swail or low ground and on all other side' by Matanzas River, forming a point on which was the Fish homestead?

A. I should judge about one hundred acres.

Q. Of this hundred acres how much was enclosed under fence—by the original fence—when you first took charge?

A. Probably about half of it. I afterwards enclosed nearly the whole of it; that is, I extended the fence further south.

Q. Were any persons except the servants residing on the place at the time of the death of the mother of Jesse Fish?

A. I can't answer the question. I don't know.

Q. Where was the mother of Jesse Fish residing in 1821?

A. I don't know of my own knowledge, but heard that she resided on the place.

470 Q. About how much further east than the present fence was the east line of the land sued for by McGruder & Logan, about which you have testified in your direct examination?

A. The McGruder & Logan land embraced about three times as much land deep as is enclosed; it takes in all the low ground, or swail, and some of the high land eastward.

Q. Who owns now the lands sued for by McGruder & Logan?

A. My son, William J. Sanchez. He purchased it soon after the conclusion of the McGruder & Logan suit.

Q. Did your son also purchase adjacent lands for which one Albert Rogero and Charles F. Hopkins, jr., had acquired from the State of Florida a title; and if so, was the purchase made about the same time as the purchase first referred to?

A. Yes, he did make the purchase a short time after he purchased the McGruder & Logan lands.

Q. Do these lands purchased by your son embrace the grounds upon which were the buildings and orange grove and cultivated lands as enclosed at the time you first took charge of the place?

A. Yes.

Q. Has your son been in continuous possession of this land since he purchased it?

A. Yes.

Q. Has this possession of your son been under a claim of ownership of the land?

A. Yes, it has; but my son would have been willing at any time and would be willing to-day to do what I requested him, but the Furmans did not and would not pay anything; that is, to give it up upon their making a just settlement.

471 Q. During this occupancy of these land' by your son under claim of ownership, has it been customary for him to have them cultivated upon shares or by tenants paying any rental or agreeing to pay any rental?

A. No; not a farthing; no shares; the parties were to get all they could make; it never has been leased to anybody at no time. My son has been away part of the time. I have had charge of it for my son and the other heirs also.

Q. Has your son resided with you in St. Augustine for the last fifteen or sixteen years?

A. Yes; in fact, I have resided with him.

Q. Prior to the freeze of 1895 was there not some income derived from the orange grove on these lands?

A. Some—very trifling; the last years before the freeze we did not get a dollar; the third year I think five dollars; it did not pay anyone to stay there; they used to steal the fruit by the bag full—people on the island and people from away.

Q. At this day who is in possession of the lands embraced in the McGruder & Logan and Hopkins & Rogero claims or deeds, claiming to be the owner, your son, Wm. J. Sanchez, or some other person?

A. No other person but my son, except the heirs of Furman, that is to give them possession upon a settlement.

At this point counsel for the defendant states to the master that he has not taken down the answer of the witness as he gave it, and they request the master to repeat the question to the witness without reading his answer as the master has taken it down or giving him any intimation of what the master has written; let the witness give his answer
472 to the question without suggestions on the part of anybody, and then for the master to determine whether the words taken down were the words spoken by the witness, or conveyed the same meaning as the words spoken by the witness.

Counsel for complainant insists that the answer is correctly taken down, but is willing for the question and answer to be read to the witness and let the witness correct the answer if incorrect.

The master rules that the question and answer should be read to the witness to be corrected if it desired by the witness. Both counsel for the defendants except to the master's ruling, because the same is not the proper practice and is equivalent to leading the witness and placing words in his mouth which are hoped to be favorable to complainant.

The question and answer here repeated to witness, and witness says the answer as taken down is correct.

Q. State what you mean by a settlement.

A. A settlement which we expect to have or ought to have—a settlement of accounts—and then my son will give it up; that was all understood, that those accounts were to be settled and, when settled, those lands were to be turned over, but no settlement has taken place; I suppose it will be.

Q. If no settlement ever takes place, who is the owner of the lands described in the McGruder & Logan, Hopkins & Rogero deed in that event?

(Question objected to by counsel for complainant because it seeks to draw from the witness a conclusion of law dependent upon the evidence of title which in case of conflicting claims can only be determined by a judicial tribunal, and because the question is irrelevant and immaterial.)

473 A. William J. Sanchez, he has paid for it; they have promised to settle, and I believe they will.

Q. If the Furman heirs refuse or are unable to pay you what you claim to be due you from them, will your son, William J. Sanchez, turn over to them his possession and claim of title to the lands last above described, or will you advise him so to do?

A. That is his business. He will have to answer that question. I will have nothing to do with it, if it comes to that point, but I don't believe it will come to that point. I believe the heirs will do what is right. In that event it will be given up.

Q. What is the amount of the indebtedness of the Furman heirs to you at this time, and upon what grounds do you claim such indebtedness?

A. I can't tell anything about the amount; the grounds for claim are for cash advances.

Q. Advances for what?

A. Cash advances put by me in the bank in Charleston, of which Charles M. Furman the senior was president. These funds or advances he used with my consent.

Q. Have you ever advanced to the Furman heirs or for their benefit any other sum or sums for which you require settlement as above stated?

A. Why, certainly; in the suits of McGruder and Logan they were interested. I had to defend that for Furman; they became interested the same after Mr. Furman's death.

Q. Why did you have to defend that suit?

A. At the request of Mr. Furman himself, the old gentleman; I paid all the expenses.

474 Q. State what other amounts advanced by you are to be included in the settlement which you demand of the Furman heirs as above stated?

A. No more debts. I don't claim any more accounts in dollars and cents except as I have stated; not one cent has ever been charged for services in any way.

Q. Do you expect in final settlement as a part of your account to include anything for your services?

A. I can't answer about that; it all depends if there is a friendly settlement. If friendly I might not receive it; if unfriendly I might exact it.

Q. Would it not be necessary in settlement for them to compensate your son for the purchase price of the land he bought and for any sums he has paid out in connection with his purchases?

(Objected to by complainant's counsel on the ground that this witness is not competent to testify what settlement might be made by his son, if any, with the Furman heirs.)

A. I should think so; it would be nothing but just, which no doubt they will do; they have never been asked for it as yet.

Q. Have you a judgment at law against Charles M. Furman or any of the Furman heirs?

(Objected to by complainant's counsel as irrelevant and immaterial.)

A. Yes; got it against Charles M. Furman, the old gentleman.

Q. When and where was it obtained and for what amount?

A. It was obtained in Jacksonville. I don't recollect the exact amount; it was about eight thousand dollars; it was some few years after the late war, say about 1867 or 1868.

475 Q. In 1868 did you not apply to the Secretary of the Interior in Washington by letter or petition asking that patent be issued covering Anastasia Island, in which letter or petition you stated you were largely interested in the Fish grant. If you answer in the affirmative, state what that large interest was.

A. I have no recollection of it, but presume it was all right. I went to Washington in person and saw them about it. My interest I claim in this way, through the interest of my deceased wife, who was an heir of Jesse Fish senior, and by purchase from other heirs, Perpall's children, whereby I claim half interest under the rules of the Spanish law.

Q. State whether or not you know anything of the will of Sarah Fish, wife of Jesse Fish senior. If so, state in full and about what time she died.

(Objected to by complainant's counsel on the ground that the question does not seek the best evidence as to the will; that the loss of the will is not established; that it is not shown that the witness has such a knowledge

of the will as to state its contents, and that any testimony which he might give would be his own conclusions as to the effect of the will and not proper testimony.)

A. I did see it in the archives, in our county clerk's office—I mean the proper office for such record—before it was burned. I don't remember when it was, since peace was proclaimed, after the suits of Furman were settled, and before the fire. I did not know Sarah Fish. As well as my memory serves me, the will divided the land on Anastasia Island between Mrs. Jesse Furman and her own blood relations in Greenville. I did not pay any particular attention to the will.

476 Q. What became of that will, if you know?

A. The records of the probate office were burned and I presume the will was burned at the time. I refer to the fire of 1887.

Q. State whether or not your affidavits and testimony concerning the grant now in question have not been laid before the Land Department of the United States in Gainesville or Washington, or both, in an action pending before said Department for the purpose of establishing the Fish title to said grant and procuring a patent in favor of the heirs of Fish.

(Objected to by complainants' solicitor as immaterial and not a proper cross.)

A. I don't remember.

Q. State whether or not Sarah Fish survived her son Jesse.

A. Yes; she did.

Q. Was there not a grant carved out of the Fish grant known as the Sanchez grant? If so, what Sanchez was that and was there any relationship to you?

(Objected to by complainants' counsel on the ground that the question seeks to solicit testimony which is not the best evidence to prove a grant.)

A. There was a Spanish grant of about twenty-*off* acres to one Francis Xavier Sanchez, and the grant on the north end of the island to one Rodriguez of about one hundred acres; said Francis Xavier Sanchez was my great uncle.

Q. In your direct testimony concerning the payment of taxes by you, do you mean to say that you have paid taxes on any of the property to which the State has obtained title from the United States subsequent to the date of such title or titles?

477 A. We paid taxes as long as we could up to the war, as long as they would receive them, but only one year after the war.

Q. Have you ever paid the taxes in behalf of the Furman heirs or any person on lands on said Anastasia Island claimed to be owned by Florida Coast Line Canal and Transportation Company, or St. Johns Railway Company, under deeds from the State of Florida, respectively, in the year 1885 and 1886, and subsequent to thos' dates?

A. No; not as far as I know.

Redirect:

Q. You stated that your son got deeds to a part of the land involved in the McGruder & Logan suits from Hopkins & Rogero; do you know from whom Hopkins & Rogero got title?

A. From the State of Florida, I think.

Q. Did any of the deeds which your son got to this property come from parties claiming under the Fish grant?

A. I think not.

Q. You stated that you had been in possession of this property representing the Furman heirs for many years; state whether or not after your son got the deeds referred to you made any formal transfer of possession to him or whether or not you continued to hold possession and control of the property for the benefit of who ever had the legal title.

A. I gave up possession to him subject to any settlement that might be made.

Q. In what manner did you turn over the possession of this land to your son?

A. By handing him the deeds.

478 Q. Do you refer to the deeds under which he claims title? If not, what other deeds?

A. I refer to those deeds; no other.

Q. Did you or not continue in charge of the property?

A. Certainly I did. I have been supervising the interest of the heirs of Fish, or Furman, for that matter.

Q. State whether or not the purchases made by your son of this property was with your knowledge and consent?

A. It was.

Q. Do I understand that you still claim an interest in the property under the Fish grant?

A. I do.

Q. Who furnished the money to pay for the property purchased by your son?

A. He furnished it himself.

Q. Did you furnish any part of it?

A. No; but would have done if he had asked me.

Q. State whether or not it is a fact that these purchases made by your son was because he and you thought that it were better that he should hold the title which came through the State rather than that it should remain in the hands of persons unfriendly to the Fish claim.

(Question objected to by defendants' counsel as irrelevant and immaterial and otherwise incompetent in redirect examination of the witness, and because the question is leading.)

A. That's right. In fact, I was saving money for all persons interested. I had paid one thousand dollars for attorneys fees, and it was cheaper and a better title in this way. Everything I meant to do for the best.

479 Q. Has there, or not, ever been any antagonism between yourself and your son in reference to the possession of this property?

A. No; he always agrees to everything I say, and in everything he says I always say all right.

Q. Did your son ever live on the property?

(Objected to by counsel for defendants on the ground that it is not proper question in redirect examination.)

A. He did so.

Q. Did you live on it at the same time?

A. No—afterwards about two years I lived on it fixing it up with about six hands, young men. It took about two years.

Q. About what time was it you lived on the property?

A. About eight or ten years ago.

Q. Did Mr. C. M. Furman, senior, come to Florida to defend the lawsuit by McGruder & Logan, which has been referred to?

A. He came to Jacksonville for that purpose.

Q. Were you familiar with the signature or handwriting of Mrs. Sarah Fish?

A. No.

Q. How do you know, then, that the paper you saw in the probate office was the will of Mrs. Sarah Fish?

A. Simply because I was told that it was there, and when I went to see it was shown to me by Mr. Stickney, judge of probate.

Q. Do you know if the will had ever been probated?

A. I don't know; the will was shown me by Judge Stickney as being all right. I presume it was all right.

Q. Can you state the contents of the will?

A. Only so far as I was interested. I have so stated before, can do it again if needed.

480 Q. Can you state the wording of the will?

A. No.

Q. Are you familiar with Spanish?

A. Not very.

Q. State whether or not the word Jose and Jesse in Spanish signify Joseph in English.

Answer. I know that Jose is the Spanish for Joseph. I don't know what *what* Jesse means in Spanish.

VENANCIO SANCHEZ.

State of Florida, County of St. Johns:

I, William F. Forward, a notary public for the State of Florida at large, duly commissioned, qualified, and authorized to administer oaths and to take and certify depositions, and a commissioner appointed by the circuit court of the United States for the southern district of Florida in chancery, as shown by the commission hereto annexed, do hereby certify that in pursuance of said commission and the annexed notice, issued and served in a cause depending in the said court wherein Charles M. Furman, in his own right and as administrator de bonis non cum testamento annexo of the estate of Charles M. Furman, deceased, and Bolivar B. Furman and Alester G. Furman are complainants, and Henry L. Mitchell, governor of Florida, and others are defendants, I was attended at my office in St. Augustine, in the State of Florida, on the 30th day of December,

A. D. 1895, at 11 o'clock a. m., by F. P. Fleming, esq., of counsel 481 for the complainants, in the matter of this deposition; and also by W. W. Dewhurst, esq., solicitor for Henry L. Mitchell and others, trustees of the internal improvement fund of the State of Florida, and A. G. Hamlin, esq., solicitor for the East Coast Canal and Transportation Company and the St. Johns Railway Company; and also by Venamcio Sanchez, the witness named in said notice, who was of sound mind and lawful age; and said witness was by me first cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, and was by me carefully examined, and he thereupon testified as above shown. The taking of the testimony of said witness not being completed, the hearing

thereof was adjourned by agreement to February 6th, A. D. 1896, on which day said parties, represented by said counsel, and the said witness appeared at my said office, and the said examination of the said witness was continued, and all his testimony was by me reduced to writing in the presence of the said witness and from his statements; and the same was subscribed by the said witness in my presence and was taken at the time and place in the annexed notice specified. I further certify that the reason for taking said deposition was, and the fact is, that the said witness is aged and infirm; that I am neither of counsel nor attorney to either or any of the parties to said suit, nor am I interested in the event of said cause, and that it being impracticable for me to deliver said deposition with my own hand into said court from which it was taken, I have retained the same for the purpose of being sealed up and directed with my own hand, and speedily and safely transmitted to the said court for which it was taken and to remain under my seal until there opened.

In witness whereof I have hereunto set my hand and affixed my official seal this 6th day of February, A. D. 1896.

[SEAL.] WILLIAM F. FORWARD,
Notary Public in and for the State of Florida at large and Commissioner of the United States Circuit Court for the Southern District of Florida to take the testimony of Venacio Sanchez de bene esse.

482 (Endorsements on envelope of commission.)

"G." Clerk of the circuit court of the United States for the 5th circuit and southern district of Florida, Jacksonville, Florida.

Rec'd & filed Feb. 12, 1896. N. A. Greening, dep. clerk.

Opened by order of court, Aug. 20, '96. J. Otto, d'y clerk.

Filed in evidence case Furman et al. vs. Mitchell et al. Marked G. H. H. Buckman, master.

Wm. F. Forward (seal), notary public for the State of Florida at large and commissioner of the United States circuit court for the southern district of Florida to take the testimony of Venacio Sanchez de bene esse.

Testimony of Venacio Sanchez de bene esse.

483 UNITED STATES OF AMERICA,
WAR DEPARTMENT,
Washington, D. C., November 5, 1896.

I hereby certify that the three pages hereto attached are a true copy of an original paper on file in the office of the Chief of Engineers, United States Army.

A. MACKENZIE,
Acting Chief of Engineers.

Be it known that A. Mackenzie, who signed the foregoing certificate, is the Acting Chief of Engineers of the United States Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed on this sixth day of November, one thousand eight hundred and ninety-six.

[SEAL.] DANIEL A. LAMONT,
Secretary of War.

To all whom it may concern: Be it known that whereas Lieutenant Stephen Tuttle, of the United States Army, wishes to cut stone for the United States of America upon Anastasia Island, for the purpose of repairing Fort St. Marks and the sea wall (in front of the northern part of the city of St. Augustine) connected therewith; and whereas a certain portion of the quarries upon said island are claimed by the heirs and legal representatives of one Jesse Fish, deceased, and there is some difference of opinion as to the division line which separates the quarries appertaining to the estate of the said Jesse Fish from those which
484 belong to the said United States, and the said Lieut. S. Tuttle is solicitous to avoid interfering with private property without the consent of the owner or owners thereof, and to save the United States from the cost and expense of paying for any stone which may inadvertently be cut on the lands claimed by the said heirs and legal representatives of the said Jesse Fish, and has for that purpose called upon Gabriel W. Perpall, the agent and attorney of the said heirs and legal representatives, to point out, fix, and establish said boundary line; and whereas it is found difficult to do so to the satisfaction of all the parties interested without causing great delay in the execution of said works, and the said Gabriel W. Perpall being desirous that the same (on account of their great public importance and the advantage which it is believed will immediately result therefrom to all individual owners of property in and near the said city) should immediately progress, as agent and attorney as aforesaid for and on behalf of said heirs and legal representatives, hereby consents and agrees that the said Lieut. Tuttle may quarry and cut the stone which may be necessary for the purposes aforesaid upon any part of said island, free from all cost, charge, or claim of the said heirs and legal representatives of any kinds or nature whatsoever, it being understood that the said Lieut. Tuttle, in the quarrying and cutting said stone, will confine himself to that part of the said island which is admitted by said Perpall to belong to the said United States, if he, the said Lieut. Tuttle, can conveniently procure therefrom all the stone which he may require of suitable quality and size for said works.
485 And the said Gabriel W. Perpall, as agent and attorney as aforesaid, in consideration of the premises aforesaid, hereby releases and discharges the said United States and the said Lieut. Tuttle from all claim or claims, demand or demands, whatsoever of the said heirs and legal representatives, and from each and every of them, on account of any stone which he, the said Lieut. Tuttle, may cut, agreeably to the foregoing understanding, for the purposes aforesaid, on that part of said island which is claimed by the said heirs and legal representatives.

Given under my hand and seal, as agent and attorney as aforesaid, at St. Augustine, this fourth day of September, in the year 1833.

GABL. W. PERPALL. [SEAL.]

Signed, sealed, and delivered in presence of—
D. LEVY,
JOHN M. FONTANE.

I assent to the above.

It is hereby further understood that the privilege granted above shall not be construed to extend to a permission to the said Lieut. Tuttle or to the United States, for the purposes expressed as aforesaid, to cut or quarry any stone whatsoever south of the stake set up by Joseph S. Sanchez, two hundred and ninety-eight chains and twelve links measured on the road southerly from the light-house, on the island aforesaid, as described more particularly in a plat made by said Sanchez, or south of a line
486 running east and west from said stake to the shores of said island.

Given under my hand and seal, as agent and attorney as aforesaid, on the same day and year above mentioned.

GABL. W. PERPALL. [SEAL.]

Signed, sealed, and delivered in presence of (the word "eight" having been interlined after the word "ninety," on the fifth line from bottom of preceding page, before signing)—

D. LEVY,
JOHN M. FONTANE.

I assent to the foregoing.

S. TUTTLE,
Lieut., U. S. Corps of Eng.

(Endorsed:) Office of the Secretary, $\frac{5248}{4}$, War Department. Rec'd M. & R. Div., War Dept., Nov. 5, 1896. "H." Agreem'nt & permn. heirs Fish with Lieut. Tuttle, U. S. A., as to cutting stone. Filed Nov. 24, 1896. H. H. Buckman, master. Marked H.

487 Internal improvement fund, State of Florida. Deed No. 14,696.

Know all men by these presents, that the undersigned, the trustees of the internal improvement fund of the State of Florida, under an act of the general assembly of said State entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, for and in consideration of the sum of one dollar per acre, to them in hand paid by John A. Henderson, of the county of Leon, State of Florida, have granted, bargained, and sold, and do by these presents grant, bargain, sell, and convey unto the said John A. Henderson and his heirs and assigns forever the following described lands, to wit:

All of unsurveyed part of section eight (8), lots numbered one (1), two (2), three (3), and four (4), of section seventeen (17); fractional unsurveyed part of northeast quarter of section eighteen (18), in township seven (7), south of range thirty (30) east, containing three hundred & eighty-one 26/100 acres, and lying and being in the county of St. Johns, in said State of Florida;

To have and to hold unto the said John A. Henderson and his heirs and assigns forever.

In testimony whereof the said trustees have hereunto subscribed their names and affixed their seals, and have caused the seal of "the depart-

ment of agriculture of the State of Florida" to be hereunto
[SEAL.] affixed, at the capitol, in the city of Tallahassee, on this the thirtieth day of July, A. D. eighteen hundred and ninety-two.

488 FRANCIS P. FLEMING, [L. S.]
Governor.
W. D. BLOXHAM, [L. S.]
Comptroller.
E. J. TRIAY, [L. S.]
Treasurer.
W. B. LAMAR, [L. S.]
Attorney-General.
L. B. WOMBWELL, [L. S.]
Commissioner of Agriculture.

I, Lucius B. Wombwell, commissioner of agriculture of the State of Florida, do hereby certify that the foregoing is a true and correct copy of deed No. 14693, which is recorded in Deed Book "L," page 461, in the State land office, and which is in my custody as commissioner aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of the State of Florida this seventh day of December, A. D. 1896.

[SEAL.] L. B. WOMBWELL,
Commissioner of Agriculture.

(Endorsed:) "M." Deed. I. I. Fund to Jno. A. Henderson. Furman v. Mitchell. Filed in evidence Dec. 2, 1896. H. H. Buckman, master.

489 Martes dia veinte y quatro de mayo de mil seteciento noventa y seis, yo, Don Miguel O'Reilly, cura beneficiad, vicario y juez ecclesiastico de esta yglesia parroquial, plaza y provincia de San Agustin de la Florida, &ca., baptisé y puse los santos oleos a una niña que nacio el dia veinte y nueve de abril del presente año, de color pardo, esclava, hija natural de Don Jose Fish, natural de esta cuidad, y de Clara Sanders, morena esclava de Dn. Juan Sanders, y en ella exerci las saeras ceremonias, y preces de nuestra Santa Madre Yglesia, y la puse por nombre Maria Sofia de la Suz, fue su madrina Maria de la Suz Ruz, y lo firme en dicho dia, mes y año.

MIGUEL O'REILLY.

Tuesday, the twenty-fourth day of May of the year seventeen hundred and ninety-six, I, Don Miguel O'Reilly, benefieed clergyman, vicar, & ecclesiastical judge of this paris' church, town, and province of St. Augustine, Florida, &c., baptized and applied the holy oils to a child, who was born on the twenty-ninth of April of the present year, of dark color, a slave, natural daughter of Don Jose Fish, native of this city, and of Clara Sanders, a negress slave of Dn. Juan Sanders, and for her I used the sacred rites and prayers of our Holy Mother Church, and I gave her for name Mary Sophie de la Sur. Her godmother was Maria de la Sur Ruz, and I signed on the same day, month, and year.

MIGUEL O'REILLEY.

(Endorsed:) N. Furman v. Mitchell. Filed in evidence May 12, 1897, marked "Exhibit N." H. H. Buckman, master. Certificate of baptism.

490 Domingo dia siete de abril de mil setecientos noventa y nueve, yo, Don Miguel O'Reilly, cura beneficiad, vicario, juez ecclesiastico de esta iglesia parroquial, plaza y provincia de San Agustin de la Florida, &c., baptize y puse los santos oleos a una niña de color parda que nacio libre, el dia veinte y seiz de marzo de corrente año, hija natural de Don Jose Fish y de Clara, morena esclava de Da. Ana Sanders, y en ella exerci las sacres ceremonias y preces de nuestra Santa Madre Iglesia, y la puse por nombre Juna Paula; fueron sus padrinos Pablo de Meyz y Juana Paredez, vecinos de esta ciudad. Les adverti el parentesco espiritual y demas obligaciones y lo firmo en dicho dia, mez y año.

MIGUEL O'REILLY.

Sunday, the seventh of April of the year seventeen hundred and ninety-nine, I, Don Miguel O'Reilly, beneficed clergyman, vicar, and ecclesiastical judge of this parish church, town, and province of St. Augustine of Florida, &c., baptized and applied the holy oils to a child of black color, born free, on the twenty-sixth of March of the present year, natural daughter of Don Jose Fish and of Clara, a negress slave of Dna. Ana Sanders, and for her I used the sacred rites and prayers of our Holy Mother Church. Her sponsors were Paul de Meys and Juan Paredes, residents of this city. I advised them of their spiritual affinity and their other obligations, and I signed on the same day, month, and year.

MIGUEL O'REILLY.

(Endorsed:) "O." Furman v. Mitchell. Filed in evidence this May 12, 1897, marked "Compl'ts' Ex. O." H. H. Buckman, master. Certificate of baptism.

491 Lunes dia trece de Abril de mil ochocientos uno, yo, Don Miguel O'Reilly, cura beneficiado, vicario, juez ecclesiastico de esta iglesia parroquial, plaza y provincia de San Augustin de la Florida, &ca., bautise y puse los santos oleos á un niño de color pardo, libre, que nacio el dia cartorce de Febrero del presente año, hijo natural de Don José Fish, natural de esta plaza, y de Clara, morena esclava de D. Ana Sanders; y en el exerci las sacras ceremonias y preces de nuestra Santa Madre Iglesia, y lo puse por nombre Juan Joseph Valentin; fueron sus padrinos Juan Paredes y su esposa, Ysabel Rindaverts, vecinos de esta ciudad; les adverti el parentesco espiritual, y demas obligaciones, y lo firme en dicho dia, mes, y año.

MIGUEL O'REILLY.

Monday, the thirteenth day of April, of the year eighteen hundred and one, I, Don Miguel O'Reilly, beneficed clergyman, vicar, ecclesiastical judge of this parish church, town and province of St. Augustine, of Florida, &c., baptized and applied the holy oils to a child of black color, free born, who was born on the fourteenth day of February of the present year, natural son of Don Jose Fish, native of this town, and of Clara, negress, slave of Dona Ana Sanders; and for him I used the sacred ceremonies and prayers of our Holy Mother Church, and I gave him for name Juan Joseph Valentin. The sponsors were Juan Paredes

and his wife Isabel Rindaverts, residents of this city. I advised them of the spiritual affinity and their other obligations, and I signed on the same day, month, and year.

MIGUEL O'REILLY.

(Endorsed:) "P." Furman v. Mitchell. Filed in evidence this May 12, 1897. Marked "Complts. Ex. P, H. H. Buckman, master. Certificate of baptism."

492 Lunes dia diez y ocho de Abril del mil ochocientos tres, yo, Don Miguel Crosby, teniente de cura beneficiado, vicario, juez ecco. auxiliar de esta iglesia parroquial, plaza y provincia de San Agustin de la Florida, ha bautise y puse los santos oleos á una niña de color parda, libre, que nacio el dia veinte y siete de Marzo el presente año, hija natural de Don Joseph Fish y de Clara, morena esclava de D. Ana Sanders; y en ella exerci las sacras ceremonias y preces de nuestra Santa Madre Iglesia, y la puse por nombre Isabel Francisca; fueron sus padrinos Antonio Capy y Isabel Rindaverts, vecinos de esta ciudad; les adverti el parentesco espiritual y demas obligaciones, y lo firme en dicho dia, mes y año.

MIGUEL CROSBY.

Monday, the eighteenth day of April, of the year eighteen hundred and three, I, Don Miguel Crosby, holding a beneficed charge, vicar and auxiliary ecclesiastical judge of this parish church, town and province of St. Augustine, of Florida, &c., baptized and applied the holy oils to a freeborn child, color black, who was born on the twenty-sev'th day of March of the present year, natural daughter of Don Joseph Fish and of Clara, a negress, and slave of D'na Ana Sanders; for her I used the sacred ceremonies and prayers of our Holy Mother Church, and I gave her for name Isabel (Francisca) Frances. The sponsors were Antonio Capo and Isabel Rindaverts, residents of this city. I reminded them of the spiritual affinity, and of their other obligations, and I signed it on the same day, month, & year.

MIGUEL CROSBY.

(Endorsed:) "Q." Furman v. Mitchell. Filed in evidence this May 12, 1897. Marked "Complts. Ex. Q, H. H. Buckman, master. Certificate of baptism."

493 Domingo dia veinte y quatro de Noviembre de mil ochocientos cinco, yo, Don Miguel Crosby, teniente de cura beneficiado, vicario y juez ecco. auxiliar de esta iglesia parroquial, plaza y provincia de San Agustine de la Florida, &ca., bautise y puse los santos oleos á una niña, color parda, que nacio el dia tres del presente, hija natural de Don José Fish y de Clara, morena esclava de Don Thomas Travers, natural de esta, y en ella exerci las sacras ceremonias y preces de nuestra Santa Madre Iglesia, y le puse por nombre Francisca Candida; fueron sus padrinos Don Juan Padredes y su esposa Da. Isabel Ridaveh, vecinos de esta ciudad; les adverti el parentesco espiritual y demas obligaciones, y lo firme en dicho dia, mes y año—entre Bengolonas—Parda—Vale.

MIGUEL CROSBY.

Sunday, the 24th day of November, of the year 1805, I, Don Miguel Crosby, holding a beneficed charge, vicar and ecclesiastical judge, assistant of this parish church, town and province of St. Augustine of Florida, &c., baptized and applied the holy oils to a child, color dark, who was born on the third of the present month, natural daughter of Don Jose Fish, and of Clara, negress, slave of Don Thomas Travers, native of this place; and for her I used the ceremonies and prayers of our Holy Mother Church, and I gave her for name Frances Candida. The sponsors were Don Juan Paredes and his wife, Dona Isabel Ridaveh, residents of this city. I advised them of the spiritual relationship and their other obligations, and I signed on the same day, month, and year.

MIGUEL CROSBY.

(Endorsed:) "R." Furman v. Mitchell. Filed in evidence this May 12, 1897. Marked "Complts. Ex. R, H. H. Buckman, master. Certificate of baptism."

494 Domingo, dia siete de febrero de mil ocho cientos ocho, Yo, Don Miguel Crosby, teniente de cura, beneficiado vicario, juez ecco. auxiliar de esta iglesia parroquial, plaza y provincia de San Agu. de la Florida, &ca., bautisé y puse los santos oleos á una niña de color pardi, qe. nació el dia veinte y tres de octobre del año pasado, hija natural de Don José Fish, natural de esta plaza y de Clara, morena libre, natural de esta provincia; y en ella exercí las sacras ceremonias y preces de nuestra Santa Madre Iglesia, y la puse por nombre Maria Clementina; fueron sus padrinos Dn. Juan Paredes, y su Esposa Da. Isabel Ridabetsh, vecinos de esta ciudad; les adverti el parentesco espiritual y demás obligaciones, y lo firmé en dicho dia, mes y año.

MIGUEL CROSBY.

Sunday, the seventh (7th) day of February, of the year eighteen hundred and eight (1808), I, Don Miguel Crosby, holding a beneficed charge, vicar, ecclesiastical judge, assistant of this parish church, town and province of St. Augustine, Florida, baptized and applied the holy oils to a child, color dark, who was born on the twenty-third (23rd) day of October of the past year, natural daughter of Don Jose Fish, native of this town, and Clara, free negress, native of this province; and for her I used the ceremonies and prayers of our Holy Mother Church, and I gave her for name Mary Clementine. The sponsors were Dn. Juan Paredes, and his wife Dna. Isabel Ridabetch, residents of this city. I advised them of their spiritual affinity and their other obligations, and I signed on the same day, month, and year.

MIGUEL CROSBY.

(Endorsed:) "S." Furman *v.* Mitchell. Filed in evidence this May 12, 1897, marked "Complts. Ex. S., H. H. Buckman, master. Baptismal certificate."

495 Miercoles, dia diez y seiz y de noviembre de mil ochocientos y doce, Yo, Don Miguel Crosby, teniente de cura, beneficiado vicario, juez ecco. auxiliar de esta iglesia parroquial, plaza y provincia de San Agustine de la Florida &ca., bautisé y puse los santos oleos á un niño que

nació el dia veinte y nueve de oho mes y año, hijo natural de Don José Fish, y de Clarissa, morena libre, y en el exercí las sacras ceremonias y preces de nuestra Santa Madre Iglesia, y lo puse por nombre Agustin: fueron sus padrinos Benjamin Seguier y Juana Francisca Fish, ambos pardos libres; les advertí el parentesco espiritual y demás obligaciones, y lo firmé en dicho dia, mes y año.

MIGUEL CROSBY.

Wednesday, the thirteenth day of November, of the year eighteen hundred and twelve, I, Don Miguel Crosby, holding a beneficed cure, vicar, ecclesiastical judge, assistant of this parish church, town and province of St. Augustine, Florida, baptised and applied the holy oils to a child who was born on the twenty-ninth of the past month & year, natural son of Don Jose Fish, and of Clarissa, a free negress, and for him I used the sacred rites and prayers of our Holy Mother Church, and I gave him for name Augustin. The sponsors were Benjamin Seguier, and Jane Frances Fish. I reminded them of their spiritual affinity and their other obligations, and I signed on the same day, month, and year.

MIGUEL CROSBY.

(Endorsed:) "T." Furman *v.* Mitchell. Filed in evidence this May 12, 1897. Marked "Complts. Ex. T., H. H. Buckman, master. Baptismal cert."

496 FLORIDA. AÑO DE 1794.

Dn. José Fish, solicitando del Gobierno, se le concedan los diez mil acres de tierra que poseia su difunto padre del mismo nombre en el plantaje nombrado el Bergel, que remató en publica subasta.

497 Sor. Gobernador y Comte. Genral. Dn. Josep Fish, natural y vecino de esta ciudad, ante US. con el mas profundo respeto se presenta y dice: Que en la publica almoneda que se hizo de los bienes de su difunto padre para pazo de sus acrehedores, remató el exponente el sitio nombrado el Vergel en un mil scicientos cinco pesos; cuya suma solo la dió con la mira de los arboles frutales de dicho sitio y leña que hay en el terreno de su pertenencia, pues las tierras son inutiles para siembra enteramente; que ha observado que varios vecinos estan cortando la dicha leña, y por tanto suplica a US. encarecidamente se digne declararle dueño de las tierras que su referido padre poseyó anexas á dicho sitio del Vergel, que segun escritura concedidas en tiempo de la posecion britanica ascendieron á diez mil acres; segun puede aclararlo Dn. Juan Leslie y Dn. Manuel Solana, á quienes les consta por haver estado aqui en aquel tiempo, bien sea como nuebo poblador de esta provincia ó por el derecho que su difunto padre tuvo á ellas, pues de no
498 obtener esta gracia de US. el exponente se considera con la perdida de la mayor parte del remate respeto á que como llevo dicho las tierras no producen siembras de ninguna especie y los arboles frutales se han secado mucho y los demas, ante razon de la misma gracia que no duda conseguir de la notoria justificacion de US.

San Agustin de la Florida, 31 de dbre. de 1796.

JESSE FISH.

Consulteme el S. asesor gral. Asi lo proveió y mando el Sor. Dn. Juan Nepomuceno de Quesada, brigadier de infanteria de los Rs. Exos., Govor., Comte. Gral., vice patrono Rl. y subdelegado de Rl. hacienda de esta ciudad de San Agustin de la Florida, su provincia por Su Magestad, que la firmó en quince de diciembre dem il setecientos noventa y cuatro; doi fe.

QUESADA.

Ante mi:

JOSÉ DE ZUBIZARRETA,
Scn. de Gobierno.

En el mismo dia lo hice saber á Dn. José Fish; doi fé.

ZUBIZARRETA.

499 He visto esta ynstancia de Dn. José Fish y si la dnipiera instruiendola á que se impidiera á otras personas el corte de leña en sus fincas ó á reivindicar estos con arreglo á los titulos de su propiedad y los perjuicios que le causasen ó le hubiesen causado consultaria á US. la providencia, comforme á dcho.: pero terminando esta ynstancia á deslindar Fish las tierras que poseió su padre en tiempo de la dominacion britanica las que quiere se le concedan en el numero de acres que expresa como anexas al Vergel, que compró en la almoneda pública hecha de los bienes que quedaron por fallecimiento de dcho. su padre; no instruiendo la referida venta segun lo imforma el presente Escno. los linderos de los que este ynteresado compró quando el Vergel corresponde á VS. asignarle las que pide como nuebo poblador para lo que le presta algun derecho preferente la posecion que alega de su padre y mas si la justifica ó repartirle las que tenga á bien y sea sin perjuicio de otro poseedor con cura audiencia en caso deverá determinarse en justicia. Asi es mi dictamen, que firmó en Sn. Agustin de la Florida á 15 de dbre. de 1794.

Pasa la firma al frente.

500 LDO. JOSEP DE ORTEGA.

SAN AGUSTIN DE LA FLORIDA *y Dbre. 15 de 1794.*

En comformidad del dictamen antecedente haga el interesado la justificacion que anuncia por ante el preste. escribano á qu. se comete y en su vista se provecerá sobre lo demás á que se contrahe, anno gnor. traigas el expediente.

QUESADA.

Ante mi:

JOSÉ DE ZUBIZARRETA,
Scno. de Govo.

En el mismo dia, mes y año, notifiqué el decreto que antecede á Dn José Fish; doi fé.

ZUBIZARRETA, *Scio.*

En la ciudad de San Agustin de la Florida, en veinte y dos de enr de mil setecs noventa y cinco, ante mi, el escribano, presentó Dn José Fish por testigo para la justificacion que se le manda dar, á Dn Juan Leslie,
501 vecino y del comercio de esta dicha ciudad al qual de comformidad de la comision que se me confiere, reciví juramento, que hizo

en toda forma de dcho., bajo el qual prometió decir verdad en lo que supiere y fuere preguntado: y siendolo, á consequencia del escrito que antecede, presentado por el mismo Fish, dijo: que con motivo á que el declarante fué uno de los que en tiempo de la dominacion britanica avaluaron las tierras, casas y solares que tenía en esta Provincia Dn José Fish, difunto, y entre ellas fué el plantaje nombrado el Bergel que aora reclama su hijo del mismo nombre, el qual poschia con titulos legitimos, dados en el Gobierno anterior de los españoles y le consta tenía los diez mil aeres de tierra, poco mas ó menos segun conocimiento y creencia del que declara, en cuia posecion lo dejó pacifico el Gobierno ingles mientras estuvo esta provincia sugeta á él, y responde que lo que deja dicho es la verdad, en cargo de su juramento hecho; que es de mas de veinte y cinco años de edad, y firmó; de que doi fé.

JUAN LESLIE.

Ante mi:

JOSÉ DE ZUBIZARRETA,
Scr. de Gobo.

502 En la ciudad de Sn. Agustin de la Florida en diez de Febrero de mil sete s. noventa y cinco el mismo Dn José Fish presentó por testigo á Dn Lorenzo Llanes, vecino de esta dcha. ciudad y natural de ella á quien yo el escrn recibi juramento que hizo por Dios y la Sta. Cruz segun dcho. bajo el qual prometió decir verdad en lo que supiere y fuere preguntado y siendolo á consequencia del escrito que antecede, dijo: Que como natural que es de esta ciudad y haber asistido en ella asi en tiempo de los Españoles antiguos como la maior parte de todo, el que dominaron esta provincia las armas britanicas, le consta haver siempre visto al difunto Dn. José Fish, padre del que lo presenta en posecion del Bergel; que poco mas ó menos cree tendria los diez mil aeres de que se dicen de terreno, el qual tambien le es constante poschia con titulo legitimo desde el Gobierno antiguo de los Españoles, y responde que esta es la verdad mediante su juramento, que es de edad de quarenta y cinco años y firmó; doy fé.

LORENZO LLANES.

Ante mi:

JOSÉ DE ZUBIZARRETA,
Scn. de Gobo.

503 En la ciudad de San Agustin de la Florida, en el propio dia, mes y año, presentó por testigo á Dn Manuel Solana, natural y vecino de esta dcha. ciudad, al qual yo, el escrivano, recibi juramento que hizo por Dios y la Sta. Cruz segun dcho., bajo el cual prometió decir verdad en lo que supiere y fuere preguntado y siendolo al tenor del escrito que antecede presentado por Dn José Fish, dijo que como tal natural y vecino de esta dicha ciudad en la que siempre ha recidido le es constante que Dn José Fish, padre del que lo presenta, ha poseido en la ysla que llaman de Sta. Anastasia el plantaje nombrado el Vergel, en el cual vivió desde el tiempo de los Españoles antiguos hasta que volvieron á tomar posesion de esta provincia el año de ochenta y cuatro y desde este hasta el de noventa ó noventa y uno, que murio y se enterró en el mismo plantaje, y que por lo que ha oido el declarante de resultas de la medicion y tasacion general

que se hizo antes de haber entregado los Yngleses á los Españoles esta provincia de los bienes raices de dcho. Dⁿ José Fish, sabe que en el
504 plantaje citado poseia los diez mil acres de tierra y el declarante los comfirma poco mas ó menos por lo que ha visto en las muchas ocaciones que estuvo en el mismo plantaje, y responde que esto es la verdad en cargo de su juramento: Que es de edad de quarenta y seis años y añade por acordarse en este acto que en tiempo de los Españoles antiguos fué el declarante con el escribano Dⁿ José de Leon á separar las canteras del Rey en la referida ysla para conceder lo restante de ella á Dⁿ José Fish, que la solicitaba como efectivamente se le concedió hecha aquella separacion, que despues que bolbieron los Españoles á tomar posecion de la provincia por los tratados con los Yngleses, que la gobernaron como veinte y un años lo comisionó el Gobierno al segundo año segun le parece de posesion para que con el yngeniero Dⁿ Mariano de la Rocque y otros dos operarios señalase las canteras antiguas como efectivamente asi lo hicieron y se clavaron cuatro estacas para señalar el terreno del Rey en dicha referida ysla y de la restante quedó dueño Fish como hasta entonces lo habia sido.

505 No firmó porque dijo no saber. Doi fé.

Ante mi:

JOSÉ DE ZUBIZARRETA,
Scᵒ. de Gobo.

SAN AGN. DE LA FLORIDA *y Febrero 12 de 1795.*

Se dio por ebaquada la justificacion que antecede y para mejor proveer dese vista de todo al Sor. contador de Rl. Hazienda, que como fiscal de ella represente lo que tenga por conveniente en uso de sus funciones y con lo que diga traigase.

QUESADA.

Ante mi:

JOSÉ DE ZUBIZARRETA,
Scᵒ. de Gobo.

En el mismo dia notifiqué el decreto que antecede a Dⁿ José Fish. Doi fé.

ZUBIZARRETA,
Scᵒ. de Gobo.

En el propio dia lo participé al Sor. Dⁿ Gonzalo Zamorano, contador de Real Hacienda como fiscal de ella; doi fé.

ZUBIZARRETA,
Scᵒ. de Gobo.

506 El Contador de Exercito y Rl. Hacienda como Fiscal de ella en diligencias promovida por Dⁿ José Fish, sobre de que se le declare dueño de las tierras que poseyó su padre anexas al sitio titulado el Bergel que remató, y consequente al auto de V. S. de 12 del corriente més en que se sirve mandar darle vista de ellas, dice: Que mediante á la venta que se hizo del citado sitio del Vergel en Dⁿ José Fish, hijo del difunto su padre del mismo nombre, no se tubo presente los linderos del terreno y solo si la tasacion de arboles que ocupa el recinto de dcho.

Bergel sin citarse los diez mil acres de tierra anexos á él segun informa el Escribano de Gob^n^ y Real Hacienda conceptúa el Ministro Fiscal que sin embargo de acreditar Fish, por la justificacion que ha hecho poseyó su padre en tiempo de la dominacion Britanica y los Españoles todo aquel terreno, no debe tener derecho á otra cosa que lo que consta por el inventario, tasacion y remate último que hizo del referido Bergel.

Que deslindando este terreno el restante hasta los diez mil acres
507 de tierra deben corresponder venderse como pertenecientes al difunto su padre y a beneficio de los acrehedores á sus bienes debiendo ser preferido Fish por el tanto que otro diera.

Que para la mayor justificacion y claridad de este expediente le parece al Ministro se sirviese V. S. mandarse una al testimonio del inventario, tasacion y remate del citado Bergel que remató Fish en cantidad de mil seis cientos cinco pesos; y en caso que D^n^ José Fish necesite tierras realengas sin perjuicio de tercero no halla el Ministro Fiscal reparo alguno en que U. S. se las conceda como nuevo poblador arreglado á lo que S. M. tiene mandado sobre este particular; que es quanto le parece poder informar y V. S. resolverá lo que tuviese por mas justo con su acostumbrada justificacion.

San Agustin de la Florida, veinte y siete de febrero de mil setecientos noventa y cinco.

GONZALO ZAMORANO.

Pongase á continuacion el testimonio que se indica y con el
508 buelban esta diligencia al Gob^r^ Ase^r^ General para que me consulte lo que corresponda en orden á los demás puntos á que se contrahe la representacion fiscal que anteced. Asi lo proveió y mandó el Sor. D^n^ Juan Nepomuceno de Quesada, brigadier de infanteria de los Rles. Exercitos, Gobernador, Com^te^ General, Vice Patrono Real y subdelegado de Real Hacienda de esta ciudad de S. Agustin de la Florida y su provincia por S. M. Magestad que lo firmó en seis de marzo de mil setecientos noventa y cinco; doy fé.

QUESADA.

Ante mi:

JOSÉ DE ZUBIZARRETA,
Scn. de Gobo.

En el mismo dia comuniqué l decreto que antecede á Dn. José Fish: doy fé:

ZUBIZARRETA.

En el propio dia lo participé al Sor Contador de Rl. Hacienda, como Fiscal de ella, Dn. Gonzalo Zamorano; doy fé:

ZUBIZARRETA, *Scrio.*

509 *Comision.*

Dn. Juan Nepomuceno de Quesada, Coronel de los Rles. Exercitos, Gobernador y Comandante General de esta Ciudad de San Agustin de la Florida y Provincia por Su Majestad: Por quanto en las diligencias que abran en este Juzgado, consecuentes al recobro de vienes que quedaron por muerte de Dn. José Fish, vecino que fué de esta ciudad, para el pago

de sus deudas sobre que está havierto concurso y presentadose en él varios acreedores á instancia del defensor nombrado para dichos. vienes Dn. Fernando Arredondo, he venido en acceder á que se hacen y vendan en publica subasta las tierras que resultan en los mismos autos ser de la propiedad de Fish para evitar el menoscabo que va esperimentandose en algunas, y pueda resultar en lo sucesivo en perjuicio de los acrehedores y consecuente á lo resuelto en auto de quince de diciembre ultimo para con las casas y solares del mismo. Por tanto, consequente á mi provehido en fecha de diez y seis del corriente, he venido en nombrar y nombro por tales tasadores, como peritos que son en el asunto, á Dn. Manuel
510 Solana y Dn. Roque Leonardy, el primero con funciones de Alcalde de la Hermandad y el segundo, Alferez de Milicias Urbanas de ella: para que con presencia de los linderos y demás que aparecen en dehas. diligencias, cuyo extracto se pondrá á continuacion, y con presencia del citado defensor de los vienes: de Dn. Vicente Mexias, Dn. Franco Rovira como testigos presenciales comisionados por el Gobierno en falta de Escribano: pasen á los indicados citios y procedan á dicha tasacion con la justificacion e integridad devida, á cuyo fin comparezcan antecedentem^te los derechos avaluadores á prestar el devido juramento en este Gobierno, y despues procedan á dar principio á su comision en la forma siguiente.

9ª partida. El paraje llamado el Bergel, que pertenece al difunto sin embargo que no parece en los autos el titulo con que lo disfrutava. Y concluido que sea, devuelvase con lo obrado á este Gobierno para proceder á lo demás que haia lugar.

San Augustin de la Florida diez y ocho de Enero de mil setecientos noventa y dos.

JUAN NEPOMUCENO DE QUESADA.

511 *Tasacion.*

Tasacion y medicion de las savanas, tierras, y solares pertenecientes á los vienes del difunto Dn. José Fish, hecha por los peritos nombrados, Dn. Manuel Solana y Dn. Roque Leonardy, en virtud de comision por el Sor. Gobernador y Comandante General de esta ciudad y Provincia por su Majestad, con presencia de Dn. Vicente Mexias y Dn. Francisco Rovira en falta de Escribano y asistencia del defensor Dn. Fernando de la Maza Arredondo.

6ª partida. El Bergel consta de quinientos y cuarenta naranjos grandes, que son los de mejor calidad, apreciados á tres pesos que importan, mil seicientos veinte pesos fuertes; y dicha propiedad consta al numero nueve de la comision..... $1,620

Yd. Trescientos hicos que dan fruto á quatro reales, ciento cincuenta pˢ fuertes..... $150

Yd. Dos cientos cincuenta naranjos para trasplantar, á tres reales, son noventa y tres pesos seis reales..... $93.60

Yd. Cuatrocientos agrios, á cuatro reales, doscientos pesos fuertes..... $200

Yd. Ciento veinte piés de nisperos á cuartro reales, sesenta pesos fuertes..... $60

Yd. Setenta y cinco piés de Higuera, á dos reales diez y ocho pesos seis reales $18.6

512 Yd. Setenta pies de durasnos, apreciados en doce pesos cuatro reales..... $12. 4

Yd. Ochenta granados á dos reales veinte pesos fuertes ..... $20.

Yd. Un limonar, apreciado en veinte y cinco pesos..... $25.

2, 180

Cuias tasaciones manifestaron los contenidos peritos nombrados haber hecho bien y fielmente segun sus ynteligencias; no firmó el primero por que dixo no saver; lo hizo el segundo con los testigos de asistencia y el defensor.

En San Agustin de la Florida, á tres de febrero de mil setecientos noventa y dos años.

VICENTE MEXIA.
ROQUE LEONARDY.
FERNANDO DE LA MAZA ARREDONDO.
FRANCISCO ROVIRA.

En la Plaza de San Agustin de la Florida, en treinta y uno de marzo de mil setecientos noventa y dos, hallandome en las puertas de esta Casa de Gobierno, yo, el Gobernador, con asistencia del contador de Real Hacienda y defensor de los vienes del difunto britanico, Dⁿ José Fish y los testigos de asistencia con quien despacho en falta de escribano, consequente á lo prevenido en decreto de veinte y seis de dicho mes
513 y año para la subasta y remate de los expresados vienes que quedavan que rematar á son de caxa y por voz del negro libre, Francisco Blasco, que hizo funciones de pregonero; habiendose convocado bastante parte del pueblo empezó aquel en altas é inteligibles voces á percibir su venta en el mayor postor desde las once de la mañana de dicho dia, expresandose havia de rematar incontinente y habiendose ofrecido barias posturas, pujas y sobrepujas por los concurrentes, y requerido por el pregonero si no habia quien mas diese que se concluia el remate, llegada la hora señalada, quedó concluido á favor de los sujetos y por los precios que se siguen. En Dⁿ José Fish quedó rematado el Bergel, que consta al numero nueve de la comision, en la cantidad de mil seiscientos cinco pesos fuertes ($1,605); y no habiendo quien ofreciese mas cantidad que la antecedente, cumplida que fué la hora señalada, mandé quedasen rematadas á favor de los antedichos, interponiendo en ello mi autoridad y decreto judicial quanto puedo, y de derecho devo; en cuia virtud se dió la buena Pró; y lo firmaron conmigo el contador de Real Hacienda,
514 el defensor de los bienes y los testigos de mi asistencia, en falta de Escribano.

QUESADA.
ZAMORANO.
FERNANDO DE LA MAZA ARREDONDO.
JUAN FALTON.
JOSÉ FISH.

El comforme á la comision partida novena de ella, la sesta de la tasacion y del remate que originoles, corren en los autos de concurso de acreedores causado por fallecimiento del britanico, Dⁿ José Fish, que quedan

en el archivo de me cargo á que me remito; y en conformidad de lo mandado hize sacar el presente testimonio que signo y firmo en San Agustin de la Florida á doce de marzo de mil setecientos noventa y cinco.

JOSÉ DE ZUBIZARRETA,
Scrn. de Gobo.

Vistos: Traslada á Dn José Fish: Así lo proveió y mandó el Sr Dn Juan Nepomuceno de Quesada, Brigadier de Ynfanteria de los Rs Exercitos, Govr Commandante Gral., Vice Patrono Real y Subdelegado
515 de Real Hacienda de esta ciudad de San Agustin de la Florida y su Provincia por Su Magestad, que lo firmó con dictamen del Sr Asesor Gral. en veinte y seis de marzo de mil setecientos noventa y cinco. Doy fé.

QUESADA.
Licdo. ORTEGA.

Ante mi:

JOSÉ DE ZUBIZARRETA.
Scrn. de Gobo.

En el mismo dia notifiqué el decreto que antecede á Dn José Fish. Doi fé.

ZUBIZARRETA, *Scrn.*

En el propio dia lo participé al Sor Dn Gonzalo Zamorano, Contador de Rl Hacienda. Doi fé.

ZUBIZARRETA, *Scrn.*

516 Dn. José Fish, nuevo poblador en esta provincia y vasallo de S. M., á consequencia de las diligencias que estoy siguiendo sobre que se me concedan los diez mil acres de tierra que poseia mi difunto padre del mismo nombre en el sitio llamado el Bergel, que rematé en publica subasta de la que se hizo de todos los bienes por su fallecimiento ante V. S. como mas haya lugar en derecho por medio de procurador publico, parezco y digo: Que se me entregaron dichas diligencias para contestar el traslado que se me confiere de la representacion del Sor. Fiscal: de cuyo contenido enterado y asi mismo de las diligencias subsecuente sacion y remate del mencionado Bergel; no dando el nominado Señor Fiscal una razon solida y convincente para que tenga efecto su solicitud contraria á mi derecho y justa pretencion; y por lo tanto tengo bastantemente consolidada esta, con la informacion que he producido, acreditando con ella la antigua posecion que tenia dcho. mi padre al Bergel, la misma á que siempre anhelé, y por cuya inteligencia dí el exesivo precio que advierte la diligencia á de remate testimoniada en autos,
517 cuya cantidad de ninguna suerte hubiera dado por solo los arboles que aparecen la , dos ni menos por el terreno que estos ocupan: en esta virtud y poniendo en consideracion de V. S., no he disfrutado la mas minima (alhoja) alhoja de lo mucho que dicho mi padre dejó; pues aun por la posecion á que aspiro me sacrifiqué, dando mas valor del que legitimamente merece, solo llevado del mucho amor que á aquel destino profeso en donde no solo he nacido sino tambien criado y educado, residencia antiquisima de mis queridos padres y amantes hermanas, las

que en la actualidad se hallan á mi abrigo y expensas, sin otro auxilio que las protexa, lo que hago igualmente con mi querida madre aun en medio de mis limitadisimas facultades, las que solo penden de aquellos pocos arboles rematados y á cuyo solo distrito pretende ceñirme el Sor. Fiscal: por lo tanto y dando por expreso todo lo demas que á mi favor resulte y no pueda yo explicar por mi ninguna inteligencia en estos asuntos y falta de directores para ellos.

518 A V. S. pido y suplico se sirva concederme la mencionada ysla, segun solicito, cuya gracia espero de la justificacion de U. S., jurando no proceder de malicia y lo demas necesario, &c. Otro Si: Y para mas breve acreditar el ningun valor y estimacion que tenía el parage que pretendo y remató, y asi mismo que mis intenciones y por lo que dí tan crecida suma no fué solo por los arboles, sino por el terreno que solicito, suplico á V. S. se sirva mandar que el presente Escribano ponga á continuacion testimonio del escrito que presenté, pidiendo la ysla por la tasacion, el cual se halla unido á los autos principales de concurso de crehedores á los vienes de mi difunto padre; y que al pié certifique asimismo como que antes se sacó á publica venta y remate no hubo quien ofreciese nada para que todo obre los efectos que correspondan; pido justicia ut supra, &c., entre lineas (breve), vale.

JESSE FISH,
BARTHOLOMÉ DE CASTRO Y FERRAN.

Puesto el testimonio que solicita en el otrosi se confiere traslado á la representacion fiscal. Asi lo proveió y mandó el Sor. Dn. José de Ortega, abogado de los rs. consejos, teniente de govr., auditor de guerra
519 y asesor gral. de esta ciudad de San Agustin de la Florida y su provincia por su magestad que lo firmó por emfermedad del sor. goberor. y comte. gral. en diez y siete de abril de mil set. novta. y cinco; doi fé.

Licdo ORTEGA.

Ante mi:

JOSÉ DE ZUBIZARRETA,
Scrio. de Gobo.

En el mismo dia hice saber el decreto que antecede á Dn. José Fish; doi fé.

ZUBIZARRETA, *Scrio.*

En el mismo dia lo participé al Sor. Dn. Gonzalo Zamorano, contador de real hacienda y como fiscal de ella; doi fé.

ZUBIZARRETA, *Scrio.*

Representacion.

Sor. Govor. y Comte. General:

Dn. José Fish con el mismo respeto á U. S. expone: Que en el remate que se hizo ayer de los bienes de su difunto padre no hubo alguno que hiciese postura en la ysla del Bergel y siendo esta la que havitó
520 dicho su padre durante su vida, seria su poseeion la mayor felicidad al que representa obligandose á entregar por ella mil seis

cientos cinco pesos en libranzas en cuia consideracion y de hallarse dicha vsla abandonada y perdiendo considerablemente de su valor cada dia. A V. S. rendidamente suplica se digne por un efecto de su notoria benignidad mandar se le dé posecion de ella. Gracia que se lisonjea del piadoso corazon de V. S.

Florida, veinte y dos de marzo de mil setecientos noventa y dos.

JESSE FISH.

Es comforme á su original que se halla al folio ciento treinta y cinco de los autos de concurso de acreedores á los bienes del difunto Dn. José Fish, á que me remito certificando como certifico que en el remate que se efectuó en veinte y uno de marzo de mil setecientos noventa y dos que corre á fojas ciento veinte y nueve de los citados autos no consta se hubiese sacado al pregon y remate el Bergel, pero por otras varias instancias que se presentaron despues de dicho remate, solicitando la compra de algunas tierras y la contextacion del defensor de los bienes de dicho
521 Fish que corre á fojas ciento quarenta y dos se aclara que dichas tierras y el Bergél no tuvieron postor en aquel remate. Y en conformidad de lo mandado signo y firmo el presente en Sn. Agustin de la Florida, en veinte de abril de mil setecientos noventa y cinco.

JOSÉ DE ZUBIZARRETA,
Scro. de Gobno.

522 El oficial primero de la contaduria pl. de egto. que la despacha por ocupacion del Sor. Contador de ella, quien se halla encargado del Ministerio y Juzgado de Rl. Hacienda por enfermedad del Sor. Gobernador, y como Fiscal de la propia Real Hacienda en deligencias promovidas por Dn Jph. Fish sobre que se le declare dueño de las tierras que poseyó su padre del mismo nombre, anexas al sitio titulado el Bergel que remató, y en conseqa. al auto que antecede de diez y siete del mes anterior en que se sirve mandar darle vista de ellas, dice: Que por el testimonio acumulado á este expediente, se acredita fueron nombrados como peritos á Dn Manuel Solana y Dn Roque Leonardy para que con presencia de los linderos que aparecian en las diligencias de testamentaria del difunto Dn Jph. Fish se tasase aquella posecion que le pertenecia con presencia del defensor de los vienes, Dn Fernando de la Maza Arredondo, de Dn Vicente Mexias y Dn Franco. Rovira como testigos de asistencia á falta de Escribano. Que en consequencia de esto se procedió por dichos peritos á solo la tasacion de arboles del citado Bergel, que ascendió
523 á dos mil ciento ochenta pesos, sin que conste linderos algunos ni el numero de acres de tierra que ocupaban aquellos arboles tasados, ni menos se hizo mencion de pertenecer al difunto Dn Jph. Fish diez mil acres de tierra, pero lo que no admite duda es, que en virtud de aquella tasacion de arboles se procedió al remate de ellos y se hizo en Dn Jph. Fish, hijo del difunto del propio nombre, en la cantidad de mil seiscientos cinco pesos, algo mas de las dos terceras partes de dicha tasacion, y por consiguiente halla fundada razon el Fiscal en su dictamen de veinte y siete de febrero ultimo para considerar dueño á Dn Jph. Fish solamente del terreno y arboles que ocupan la referida tasacion, que fué lo que lexitimamente se remató, respecto de que hasta aquel entonces nada constaba de los acres en que consistia el Bergel, defecto á la verdad bien reparable en los peritos tasadores, pues habiendoseles prevenido deslindasen el terreno,

debian haberlo hecho con expresion individual del terreno que pertenecia propio al difunto Fish, de cuyo defecto proviene este nuevo recurso.

En estos terminos conceptúa el Fiscal que en virtud de la justi-
524 ficacion que tiene hecha Fish en estas diligencias, acredita que el terreno ó sitio titulado el Bergel se compone de diez mil aceres de tierra y que su intencion, cuando remató aquél, fué sin duda en la intelixencia que estarian comprehendidos en dicha venta los diez mil aceres de tierra citados que disfrutó su padre, con respecto á que, separado el terreno que ocupan los arboles frutales que se hallan tasados, el restante no es adequado para siembras y por que el defecto ó descuido que tuvieron los peritos Dⁿ Manuel Solana y Dⁿ Roque Leonardy en hacer los linderos de aquel terreno, considera no debe perjudicar el derecho que asista á Dⁿ Joseph Fish. Por todas estas reflexiones á que dá motivo este expediente concluye el Fiscal, y le parece puede V. S. mandar se proceda á hacer los linderos que corresponden al Bergel en numero de diez mil aceres de tierra que justifica perteneció á su padre y son anexos al citado vergel, rematado con participacion del defensor de los vienes del difunto Dⁿ Joseph Fish, por si tubiere que pedir sobre lo actuado en estas diligencias para
525 que aclarados estos puntos quede en libre posecion de los enunciados diez mil aceres de tierra que le pertenecen como anexos al citado Bergel, ó V. S. resolverá lo que juzgare por mas justo con su acostumbrada justificacion.

Sᵗᵒ Agustin de la Florida, quatro de mayo de mil setecientos noventa y cinco.

José Antonio de Yguinez.

Autos: Así lo proveió y mandó el Sor. Dⁿ Bartolomé Morales, Coronel de Ynfanteria de los Rˡˢ Exerᶜᵒˢ Comᵈᵉˢ del Tercero Batallon de Cuba que guarnese esta plaza de Sᵗᵒ Augustin de la Florida y Gobernador Politico y Militar de ella y su Provincia, por enfermedad del señor propietario, que lo firmó en diez y seis de mayo de mil setecientos noventa y cinco. Doi fe:

Licdo. Ortega.

Morales.
Ante mi:

José de Zubizarreta,
Scrio. de Govo.

526 En el mismo dia notifiqué el decreto que antecede á Dⁿ José Antonio Yguiñiz por su representacion fiscal; doi fé.

Zubizarreta, *Scrio.*

En dicho dia lo notifiqué á Dⁿ José Fish; doi fé.

Zubizarreta, *Scrio.*

San Agustin de la Florida, *y Junio 12 de 1795.*

Para mejor proveer dese vista al defensor de los vienes de Dⁿ José Fish y buelvanse á traer los autos.

Licdo. Ortega.

Morales.
Ante mi:

José de Zubizarreta,
Scrio. de Govo.

Dⁿ Rafael Saavedra de Espinosa, proor. publico de esta ciudad y defensor de los vienes del difunto Señor Josef Fish, vezo que fué de esta ciudad, y a consequencia de las diligencias que ha iniciado Sor.
527 Josef Fish, hijo, del antedcho. difunto, parezco ante VS. y en la mejor forma que haya lugar en derecho digo: Que he examinado con la prodigidad que me permite mi corta suficiencia quanto expone el hijo del nominado Fish en favor de su derecho, y hallo en lo hasta aquí actuado que este procedió inadvertidamente al tiempo que remató el sitio llamado el Bergel pues devia en aquelo año haber manifestado clara y distintamente á lo que se contrahia su solicitud; no obstante de que en la actualidad procura disculpar su inadvertencia por la justificacion que tiene hecha en dcho. expediente por todo lo qual y contrayendome á la exposicion tan fundada del oficial 1° de la Rl. contaduria, Don Josef Antonio Yguiñiz, que hace las funciones del Sor. fiscal, cuya exposicion se halla á en la que se advierte la falta de precaucion con que procedieron los peritos Sor. Manuel Solano y Dⁿ Roque Leonardy, quienes devian haber manifestado en su oportunidad los linderos de que se componia aquel terreno, con cuya advertencia no solo hubieran dado verdadero cumplimiento á su encargo sino tambien se hubiera obviado el presente Litis y por consiguiente se obvaria con un total acierto
528 en el presente caso y sin atender al perjuicio tanto de los vienes como el del promovente de estas diligencias, por cuyas razones (me parece) puede VS. concederle á Dⁿ Josef Fish los diez mil acres de tierra que poschia su difunto padre del mismo nombre y sobre todo providenciara VS. con el arreglo que cada dia se advierte en sus acertadas providencias siendo esto cuanto puede decir el defensor de dchos. vienes en cumplimiento del desempeño de su encargo. San Agustin de la Florida, 17 de Junio de 1795.

RAFAEL SAAVEDRA DE ESPINOSA.

Vistos: y que de la justificacion ministrador en este expediente por Dⁿ José Fish consta no solo que su padre del mismo nombre poschió desde el tiempo de los antiguos Españoles y en la dominacion Britanica los diez mil acres de tierra cuia posecion pretende en el sitio nombrado el Vergel que remató en publica subasta sino tambien que hizo postura al nominado terreno bajo la que deliò entenderse su remate cuia falta en aclararlo asi al tiempo de él no deve perjudicarle y ha dado causa a este litigio,
529 dijo su sria.: Que declarandolo como lo declarava ahora mandava en consequencia que o bien por el dcho. que presta á Fish la adquisicion one del citado terreno en los mil seicientos cinco pesos que constan del remate desembols por el Bergel ó bien por el dcho. que le presta la antigua posesion de su padre en los nominados diaz mil acres de tierra ó finalmente en consequencia de la solicitud de Fish para que se le concedan como nuevo poblador se le ponga en posesion del mismo terreno que consta poschió su padre y ya está deslindado con la reserva de las canteras y el demás gl. no se le concedió á dcho. su padre y siempre se reservó al Rey; renovandose en caso necesario á costa del yntersado los linderos por el mismo perito Dⁿ Manuel Solana, que en tpo. de los antiguos Españoles y á la nueva posecion de estos de la provincia deslindó de orden del Govierno las preds. canteras para posesionar como se verificó; al padre del que promueve esta ynstancia del terreno qe. repite y se lo concede en los terminos arriva expuestos; dandosele su posesion por el presente

330 escribano, á quien se comisionó cuando con el perito nombrado y algun otro operario mas que se necesite concurra al deslinde al que asistirá tambien por la representa^on del R^l Fisco, la persona que dispu^ey el Sor. Ministro de Rl. Hacienda. Todo lo que se hizo constar por dilig^a con la q^l y la tasasion de costas que satisfará el yntteresado se tendrá por concluso este expediente: Asi lo probeio y mandó el Sor. D^n Bartolomé Morales, coronel de ynf^a de los R^les exertos., com^te del tercero batallon de Cuba, que guarnece esta plaza de Sn. Agustin de la Florida, y governador militar y politico interino de ella y su provincia por emfermedad del Sor. propietario que lo firmó sor dictamen del Sor. asesor gral. en diez y nueve de junio de mil setecientos noventa y cinco; doi fé.

Licdo. Josef de Ortega.

Bartolomé Morales.

En San Agustin, en el mismo dia, mes y año notifiqué el auto que antecede á D^n José Fish; doi fé.

Zubizarreta, *Scio.*

331 En el propio dia lo intimé á D^n Rafael Saavedra de Espinosa por su representacion; doy fé.

Zubizarreta, *Scio.*

En el mismo dia, mes y año lo participé al Sor. Contr. de Rl. Hacienda Dn. Gonzalo Zamorano por su santacion fiscal; doi fé.

Zubizarreta, *Scio.*

Diligo. de deslinde y posecion.

Estando en el plantage nombrado el Bergel, situado en la Ysla de Santa Anastasia, á diez de julio de mil setecientos noventa y cinco, en conformidad de lo prevenido en el auto que antecede, se procedió al deslinde del terreno que se comprehende en estas diligencias pasando desde dcho. parage, el donde estan situadas las canteras del R y de particulares D^n Manuel Solana, perito nombrado al intento, quien pasando los linderos antiguos con D^n José Lorente, maestro maior de las reales obras que le acompañó para instruirse D^n Tadeo de Arribas, oficial de la Real Contaduria por ocupacion del Sor. Contador por su representacion fiscal,
332 y yo, el preste, escribano, hiva clavando estacas para señalar dchos. linderos, á lo ancho de la isla y separó las referidas canteras, diciendo que todo lo demás fuera aquellas era lo que correspondia a D^n José Fish, á quien hallandose presente tambien yo, el sitado escribo., en uso de la comision que se me confiere, puse en posecion del terreno señalado, entrandole en él por la mano y paseando á caballo juntos por varios parajes hasta llegar á la casa de la havitacion; todo lo qual hizo en señal de dcha. posesion que tomó quieta y pasificamente y sin contradiccion. En testimonio de lo qual y para la devida constancia extendí la presente diligencia que firmaron todos, á excepcion de Solana que dixo no saber; y de todo lo que doi fé.

Tadeo de Arribas.
Jesse Fish.
José Lorente.

Ante mi:

José de Zubizarreta,
Scrio. de Gorno.

(Endorsed:) N. 17. Jesse Fish. 19 June, 1795. U. S. surveyor-general's office, Tallahassee, Fla., June 15th, 1897.

533 I, W. H. Milton, jr., U. S. surveyor-general of Florida, in whose custody as such surveyor-general are the public archives, commonly spoken of as the Spanish archives, do hereby certify that the foregoing documents written on leaves numbered 1 to 21, both inclusive, and the title-page, is a true and correct copy of the original documents in the said public archives in my office and custody. Where words or letters were destroyed by the ravages of time or insects, in the original, I have, in the copy above, indicated the same by irregular curved lines.

In testimony whereof I have hereunto set my hand and private seal, there being no seal of office, the above date.

W. H. MILTON, Jr., [SEAL.]
U. S. Surveyor-General of Florida.

(Endorsed:) Furman vs. Mitchell. Filed in evidence this July, 6th, 1897. Marked "Complts. Exhibit U, H. H. Buckman, master." Proceedings in re Fish grant. St. Anastasia. Spanish.

534 FLORIDA. YEAR 1794.

Mr. Jose Fish, soliciting for the Government that the ten thousand acres of land should be granted to him, which his deceased father of the same name possessed at the plantation named "The Verjel," or "Bergal" (meaning beautiful*y* orchard), which was sold at public auction.

Senor Governor and General Commander: Don Jose Fish, native and resident of this city, presents himself to your excellency with the most profound respect, and states that at the public auction which was made of the property of his deceased father for the payment of his creditors the exponent purchased the place called "The Verjel" for $1,605 (one thousand six hundred and five dollars), which sum he gave only with the view to the fruit trees of said place and timber which is on the land belonging to it, as the land is entirely useless for planting; that he has observed that several neighbors are cutting the said timber, and therefore he humbly prays your excellency to be pleased to declare him owner of the lands which his said father possessed annexed to said place, the "Verjel," which, according to the deeds granted in the time of the British possession, amounted to ten thousand acres, according to what Don John Leslie and Don Manuel Solano can declare, it being well known to them, as they were here at that time, whether it may be as a new settler of this province or by the right which his deceased father had to them. Since if your exponent does not obtain this favor from your excellency he will consider himself as the loser of the greatest part of his purchase, because, as he has stated before, the lands will not produce crops of any kind, and a great number of the fruit trees are dried up, which is likely to occur to the balance of them. A favor which
535 he does not doubt to receive from the notorious justice of your excellency.

St. Augustine, Florida, December 2/796.

JESE J. FISH.

Let his honor the assessor-general consult with me. Thus it is ordered and decreed by Senor Dn Juan Nopomuceno de Lacada, brigadier of the infantry of the royal armies, governor, commander in chief, vice-royal patron and subdelegate of the royal domain of this city of St. Augustine, Florida, and its provinces, for His Majesty, who signed on the 15th of December, 1794, which I attest.

QUESADA.

Before me.

JOSE DE ZUBIZARRETA,
Notary of Gov.

On the same day this was made known to Don Jose Fish, which I attest.

ZUBIZARRETA, *Notary.*

I have seen this memorial of Don Jose Fish, and if it directed itself to the setting forth that he would pray for the prevention to other persons from cutting timber on his lands, or to recover them, according to the titles of his property, and the damage which it had caused or might have caused him, I would consult on the interlocutory decree with your excellency according to law; but this memorial ending in making out for Fish the boundaries of the lands which his father possessed at the time of the British dominion, which he desires should be granted to him, the same number of acres which he sets forth as annexed to the "Verjel," which he purchased at public auction held of the property left by the decease of said father. The said sale, as the present notary states, not setting forth the boundaries of these which this party purchased when he did the "Verjel," it remains with your excellency to assign him these
which he asked for as a new settler, to which the possession of
536 his father, alleged by him, gives him sound right of preference,
and the more if he proves it, or to distribute to him these which your excellency thinks proper and which may be without injury to another possession. With which hearing in the case it ought to be determined judicially. This is my opinion, which I sign in St. Augustine, Florida, 15th day of December, 1794.

LICENTIATE JOSEF DE ORTEGA.

ST. AUGUSTINE, FLORIDA, *15th December, 1794.*

In conformity with the foregoing opinion, let the interested make the proof which announces before the present notary, to whom it is committed and in sight, if it—the matter on which it treats—shall be decreed upon. For which purpose let the proceedings be brought forward.

QUESADA.

Before me.

JOSE DE ZUBIZARRETA,
Notary of Government.

On the same day, month, and year the foregoing decree was made known to Don Jose Fish, which I attest.

ZUBIZARRETA, *Notary.*

In the city of St. Augustine, Florida, 22nd September, 1795, before me, the notary, Dn Jose Fish, presented as a witness for the proof which he was ordered to give, Don John Leslie, resident and merchant of this said city, from whom, in conformity with the commission which was conferred upon me, I received the oath, which he made in all form of law, under which he promised to tell the truth to the best of his knowledge in what should be asked him, and it been done so in consequence of the aforesaid petition presented by the said Fish, said that as the per-
537 son who declares was one of those who in the time of the British Government valued the lands, houses, and lots which Don Jose Fish, deceased, had in his possession, and among them was the plantation named "the Verjel"—which his son of the same name now claims—which he possessed, with lawful titles given in the time of the former Spanish Government; and it is known to him that he had the ten thou-'and acres of land, more or less, according to the knowledge and belief of deponent, in possession of which he remained peac'ably while the British Government held the province; and answers that what he has said is the truth, by virtue of the oath which he has taken; that he is over twenty-five years of age, and sign' this, which I attest.

JOHN LESLIE.

Before me,

JOSE DE ZUBIZARRETA,
Notary, Government.

In the city of St. Augustine, Florida, the 10th day of February, 1795, the said Don Jose Fish presented as witness Don Lorenzo Llanes, resident of this said city and native of it, for whom I, the notary, received the oath, which he made by God and the Holy Cross, according to law, under which he promised to tell the truth in what he knew and should be questioned, and having been done so in consequence of the foregoing petition, he said that as a native which he is of this city, having lived in it both during the time of the old Spanish, as well as the greater part of that in which this province was governed by the British Government, he is certain of having always seen the deceased Don Jose Fish, father of the memorialist, in possession of "the Verjel," which contains ten thousand acres of land, more or less, as stated, that it is also well known to him he possessed, with lawful titles from the old Spanish Government, and he answers under oath that this is the truth, that he is of the age of forty-five years, and signed this, which I attest:

538 LORENZO LLANES.

Before me,

JOSE DE ZUBIZARRETA,
Notary, Government.

In the city of St. Augustine, Florida, in the same day, year, and month, he presented as a witness Don Manuel Solano, native and resident of this same city, from whom I, the notary, received the oath, which he made by God and the Holy Cross, according to law, by which he promises to tell the truth to the best of his knowledge in what should be asked him, and being so as to the tenor of what the foregoing petition presented by Don Jose Fish contained, said that, as a native and resident

COPY BOUND CLOSE IN CENTER

of this said city, in which he has always resided, he is certain that Don Jose Fish, father of the person who brings him forward, has possessed on the island called St. Anastacia, the plantation called "the Verjel," on which he lived since the time of the old Spanish Government until they returned to take possession of this province in the year eighty-four, and since that until ninety or ninety-one, when he died and was buried on the same plantation, and from what the deponent has heard of the result of the general survey and valuation which was made before the English had delivered this province to the Spaniards of the real-estate property of Don Jose Fish, he knows that at the said plantation he possessed the ten thousand acres of land, and the deponent corroborates it more or less from what he had seen on the many occasions when he was at the same plantation; and he answers that this is the truth by virtue of his oath; that he is forty-six years of age, and he adds that he recollects at this moment that at the time of the old Spanish dominion the deponent went with the notary Don Jose de Leon by command of the Government to separate the King's quarries on the said island in order to grant the balance of it to Don Jose Fish, who solicited it, and it was actually
539 granted to him, after having made said separation; that after the Spaniards returned to take possession of said province by the treaty of peace with the English, who governed it about twenty-one years. About the second year afterward the Government commissioned him, together with the engineer D'n Manuel de la Roque and two other workmen to designate the old quarries, which they actually did, and set up four stakes to mark out the land of the King on said island, Fish remaining owner of the balance, as he had been until then. He did not sign, as he said he did know how to write, which I attest before me,

JOSE DE ZUBIZARRETA,
Notary of Government.

ST. AUGUSTINE, FLORIDA, *12th of February, 1795.*

The foregoing proof being completed and in order to issue a decree, now fully let the whole be submitted to the collector of the exchequer, that as fiscal of it, he may represent as convenient in the discharge of his functions; and with what he may say let it be brought forward.

QUESADA.

Before me,

JOSE DE ZUBRIZARRTA,
Notary of Government.

On the same day the following decree was notified to Don Jose Fish, which I attest.

ZUBIZARRETA, *Notary.*

On the same day it was communicated to Senor Don Gonzales Zamorano, exchequer as fiscal of it, which I attest.

ZUBIZARRETA, *Notary.*

ST. AUGUSTINE, FLORIDA, *27th February, 1795.*

The collector of the army and of the royal domain as fiscal of it, in the proceedings moved by Don Joseph Fish, by which he was declared

owner of the lands which his father possessed annexed to
540 the place called "the Verjel," which he bought at auction, according to the decree of your excellency of the 12th inst., in which your excellency was pleased to order that they should be submitted to him, states that at the sale which was made of the said place, "the Verjel" to Don Joseph Fish, son of the deceased of same name, the boundaries of the land were not taken in consideration, and only the valuation of the trees within the precincts of the said orchard, without noticing the 10,000 acres of land annexed to it. According to the report of the notary of the government and of the royal domain, the fiscal minister is of opinion that, although Fish proves by the evidence he has presented that his father possessed during the time of the British and Spanish Governments all that land, he ought not to have a right to anything more that what he proves by the inventory, valuation, and sale which was made of said orchard; that this land been laid off, the remainder up to 10,000 acres ought to be sold as belonging to his deceased father, and for the benefit of the creditors of his estate, said Fish getting the preference for as mush as another would give; that for the better proof and elucidation of this proceeding, it seems fit to the minister your excellency should be pleased to order that there be annexed to the testimony the inventory, valuation, and sale of the said orchard, which was sold at auction to Fish for the sum of $1,605 (one thousand six hundred and five dollars), and in case that said Joseph Fish has occasion for public lands, without injury to a third person, the fiscal minister does not find any objection that your excellency should grant them to him as a new settler, according to what his Majesty has commanded on this subject, which is all that offers itself to me for your excellency's information, who will please to determine with you usual justice.

GONZALO ZAMORANO.

Let this testimony which is indicated be placed in continuation
541 and with it those proceedings returned to the assessor-general, that he may consult with me as to what is proper as respects the other points to which the foregoing fiscal representation refers. It is thus decreed and ordered by Senor Dn. Juan Nepomuceno de Quesada, brigadier of infantry of the royal armies, governor, commander in chief, vice-royal patron, and subdelegate of the royal domain of this city of St. Augustine, Florida, and its province, for His Majesty, which he signed on the 6th of March, 1795, which I attest.

QUESADA.

Before me.

JOSE DE ZUBIZARRETA,
Notary of Government.

On the same day the foregoing decree was made known to Dn. Jose Fish, which I attest.

ZUBIZARRETA, *Notary.*

On the same date it was communicated to Senor Dn. Gonzalo Zamorano, exchequer as fiscal of it, which I attest.

ZUBIZARRETA.

Commission.

Du Juan Nepomucino de Quesada, colonel of the royal armies, governor and commander in chief of this city of Saint Aygustine, Florida, and its province, for His Majesty: Whereas, in the proceedings which took place in this tribunal, arising from the recovery of the estate left by the decrease of Don Jose Fish, who was resident of this city, for the payment of his debts, the proceedings being opened, several creditors appeared at the petition of the defender for said estate, Don Fernando Arredondo. I have granted permission that there should be valued and sold at public auction the lands which result in the said proceedings to be the property of Fish and to avoid the deterio'ation some of them are about to
542 experience and which would ultimately result to the injury of the creditors, and according to what was resolved in the decree of the 15th of December last in regard to the houses and lots of the same. Wherefore, according to what has been decreed by me under date of the sixteenth instant, I have appointed, and do appoint, as said appraisers men skilled in such business, Dn. Manuel Solano and Don Leonardy, the former justice of the peace, and the latter ensign of the local militia, that, taking into consideration the boundaries and whatever else appears on said proceedings, which extract will be annexed below, and in the presence of the said defender of the estate and of Dn Vincente Mexias and Don Francisco Rovira as presential witness, commenced by the government for want of a notary. Let them go to said places and proceed with the valuation with due justice and integrity, for which purpose let the said appraisers previously appear before the government, and after been duly sworn, then proceed to carry out their commission in the following form:

9th item. The place called "El Verjel," which belongs to the deceased, although the title under which he held it does not appear in the proceedings, and when finished, let it be returned with the account of what has been done to this government, to proceed further as they may think proper.

Saint Augustine, Florida, eighteenth of January, seventeen hundred and ninety-two.

JUAN NEPOMUCENO DE QUESADA.

Valuation.

Valuation and survey of the Savamas, lands, and lots belonging to the estate of the deceased Don Jose Fish, made by the appraisers, named Don Manuel Solano and Don Rogue Leonardy, in virtue of the
543 commission by his excellency the governor and commander in chief of this city and province, for His Majesty, in presence of Don Vicente Mexias and Don Francisco Rovira, for want of a notary, and the assistance of the defender, Don Fernando de la Arredondo.

6th item. "The Verjel" consists of 540 large orange trees, which are of the best quality and valued at three dollars each, which amount to 1,620 hard dollars. and said property answers to number nine of the commission $1,620

6th item.	Three hundred small ones bearing fruits, at four reals each, 150 hard dollars	8150
"	Two hundred and fifty orange trees to transplant, at three reals, ninety-three dollars and six reals	93.6
"	Four hundred sour orange trees, four reals, two hundred hard dollars	200
"	One hundred and twenty medlar trees, at four reals each, sixty hard dollars	60
"	Seventy-five fig trees, at two reals, eighteen dollars, six reals	18.6
"	Seventy peach trees valued at twelve dollars and four reals	12.4
"	Eighty pomegranates, at 2 reals, twenty-five dollars	20
"	A lime grove valued at twenty-five dollars	25
		2,180

Which said valuation the said appointed appraisers declared they had performed well and faithfully to the best of their knowledge. The first did not sign it, not knowing how to write; the second did it, together with the presential witness and defender.

In Saint Augustine, Florida, the 3rd of Feb'y, 1792.

544

VICENTE MEXIAS,
ROQUE LEONARDY,
FERNANDO DE LA MAZA ARREDONDO,
FRANCISCO ROVIRA.

Auction sale.

In the city of Saint Augustine, Florida, thirty-first of March, seventeen hundred and ninety-two, I, the governor, with the assistance of the collector of the royal revenue and the defender of the estate of the deceased British subject, Don Jose Fish, and the presential witness, whom, due to the absence of a notary, had dispatched it, according to what is provided in the decree of the twenty-six of said month and year, for the auction sale of said property which remained to be auctioned off. At the beat of the drum and call of the free negro, Francisco Blasco, who performed the functions of common crier, and having gathered a considerable crowd, he began at eleven o'clock in the morning of said day in a loud an' intelligible voice to auction off to the highest bidder, stating that they must be sold immediately and without reserve. Several bids and on bids having been made by the crowd, the crier notified them again, and not any more bids having been offered and the appointed time for closing the sale having arrived, he concluded in favor of the following persons and prices: To Don Jose Fish, "the Verjel," which answers to number nine of the commission, for the sum of sixteen hundred and five dollars ($1,605), and there not been any higher bid than the foregoing, and the appointed hour having transpired, it was ordered that they should be bid off in favor of the aforesaid, interposing therein my authority and judicial decree, as I can and ought by right to do, in virtue of which he was declared the purchaser; and

545 there signed with me the collector of the royal domain, the defender of the estate, and the assistant witnesses in absence of a notary.

QUESADA,
ZAMORANO,
FERNANDO DE LA MAZA ARREDONDO,
JUAN FULTON,
JOSE FISH.

This is consistent with the commission, ninth clause of it, sixth of the valuation, and that of the auction sale which originated from the proceedings of the Englishman, Don Jose Fish, which remain noted in the archives in charge to which I refer. And in obedience to orders I have caused the present copy, which I sign and seal in St. Augustine, Florida, the twelfth of March, seventeen hundred and ninety-five.

JOSE DE ZUBIARETA,
Notary of Government.

The preceding document having been examined and found correct, it was passed over to D'n Jose Fish, and was thus ordered and decreed by Senor Don Juan Nepomucenus de Quesada, brigadier of the infantry of the royal armies, governor, vice-royal patron and subdelegate of the royal domain of this city of St. Augustine, Florida, and its province for his Majesty, who signed it, with the opinion of his honor, the assessor-general, on the twenty-six of March, seventeen hundred and ninety-five, which I attest:

QUESADA,
LICENTIATE ORTEGA.

Before me,

JOSE DE ZUBIZARRETA,
Notary of Government.

On the same day, month, and year the foregoing decree was notified to D'n Jose Fish, which I attest:

546 ZUBIZARRETA, *Notary.*

On the same day it was communicated to Dn. Gonzalo Zamorans, collector of royal revenue, which I attest.

ZUBIZARRETA, *Notary.*

Don Jose Fish, a new settler in the province and a subject of His Majesty, in consequence of the proceedings which I am following up, in order to have granted to me the ten thousand acres of land which my deceased father of the same name possessed at the place called the "Verjel," and which I bought at public auction, which was held of all his property left at his decease. Before your excellency, in the manner most conformable with law, through the medium of the public solicitor, I appear and say that the public proceedings should be delivered to me, in order to answer to the copy which was given me of the representation of the Fiscal, informed of the contents of them, and also of the subsequent proceedings of the valuations and auction sale of said *of said* "Verjel." The said Senor Fiscal not giving a solid and convincing reason that his opinion

should prevail contrary to my rights and just pretentions, and whereas I have sufficiently confirmed it by the proof which I have adduced, proving by it the ancient possession which my said father had of "the Verjel," the same for which I have always been anxious, and on which account I paid the excessive price which the proceedings of the auction sale copied in the judicial proceedings show. Said sum I would on no account have paid for the trees, paid much less for the land occupied by them. In virtue of which I submit to the consideration of your excellency that I have not enjoyed the least valuable article of the many which my said father left, I have injured my interests by giving more for it than it lawfully is worth, solely impelled by the great attachment I have for the place in which I have not only been born, but also brought up and educated, the ancient residence of my dear parents and beloved
547 sisters, who are actually under my protection and charge, as well as my dear mother, without any other income but what can be derived from the limited production of the few trees, which have—and charge, as well as my dear mother, and without any other means but what can be derived from the limited production of the few trees, which have been sold at auction, and to which space only the Senor Fiscal pretends to restrict me.

Wherefore, and hoping that whatever else may be said in my favor will be taken in consideration, as I can not express myself properly from the little knowledge I have in these matters and for want of director in them, I ask and pray your excellency to be pleased to grant me the said island as I have solicited, which favor I hope for from the justice of your excellency, swearing that I don't proceed from malice, and whatever else is necessary, and so forth.

Furthermore, to reassert the little value of the place I claim and bought, and also that my intentions when I paid such a large sum, not alone for the trees, but for the land which I have solicited, I pray your excellency that the present notary place in continuation a copy of the deed which I presented asking for the appraising of the island, which deed is united to the principal proceeding of the meeting of the creditors of the estate of my deceased father, and that he may so certify at the foot of it; also, that before it was brought to public auction sale nobody offered anything for it; that all may produce the corresponding effect I pray as above.

JESSE FISH.
BARTHOLOMÉ DE CASTRO Y FERRER.

The copy which is solicited in the note being placed in continuation, let the whole be passed over to the representation Fiscal. It is thus decreed and ordered by Senor Don Jose de Ortega, advocate
548 of the royal counsel, lieutenant-governor, auditor of war, and assessor-general of the city of Saint Augustine, Florida, and its province, for His Majesty, who signed it in consequence of the illness of the governor and commander in chief the seventeenth of April, seventeen hundred and ninety-five, which I attest.

LICENTIATE ORTEGA.

Before me:

JOSE DE ZUBIZARRTA,
Notary of Government.

On the same day the foregoing decree was made known to Don Jose Fish, which I attest.

ZUBIZARETA, *Notary.*

On the same day it was communicated to Senor Don Gonzalco Zamorano, collector of the royal revenue and attorney for the same, which I attest.

ZUBIZARETA.

Representation.

FLORIDA, *Twenty-second of March, 1792.*

Senor Governor and Commander in Chief:

Don Jose Fish with the greatest respect states to your excellency that at the public sale which took place yesterday of the property of my deceased father there was no person who would bid for the island of the "Verjel," and that being the place which his father inhabited during his lifetime, the possession of it would be the greatest satisfaction to your memorialist, he obligating himself to pay sixteen hundred and five dollars in promissory notes, in consideration of which and the said island being abandoned, losing much of its value every day, he prays your excellency to have the goodness to order that he be placed in
549 possession of it, a favor which he hopes for from the benevolence of your excellency.

JESSE FISH.

This is a true copy of the original, which is in folio one hundred and thirty-five of the proceeding of the creditors of the deceased Dn. Jose Fish, to which I refer, certifying, as I do certify, that at the auction sale which took place on the twenty-first of March, seventeen hundred and ninety-two, which runs to page one hundred and twenty-nine of the said proceedings, it does not appear that the "Verjel" was brought forward to public outery and auction, but from the various memorials which have been presented since the said auction sale, soliciting the purchase of some lands, and the plea of the defender of the estate of the said Fish, which runs up to page one hundred and forty-two, it is evident that said lands and the "Verjel" had no bidder at the auction sale, and, in conformity with the orders, I sign and seal this present in Saint Augustine, Florida, the twenty-fifth day of April, seventeen hundred and ninety-five.

JOSE DE ZUBIZARETA,
Notary of Government.

ST. AUGUSTINE, FLORIDA, *Fourth of May, 1795.*

The first officer of the chief comptroller's department of the army, and who performed the duties thereof due to the occupation of the collector, and who is charged with the administration and court of justice of the royal treasury on account of the illness of his excellency the gove'nor, and as attorney fiscal of the royal treasury in the proceeding moved by Dn. Jose Fish, in order that he should be declared owner of the lands which his father of the same name possessed adjoining the place called the "Verjel," which he bought at auction and in consequence of the proceeding decree of the seventeenth of the previous month, in which

550 orders were given that he should examine them. He states as by the annexed to this proceeding that it is proved that Dn. Manuel Solano and Don Roque Leonardy were appointed appraisers; that, taking in consideration the boundaries which appear in the testimentary proceedings of the deceased Don Jose Fish, that the property which belonged to him was valued in the presence of the defender of the estate, Don Fernan de la Maza Arredondo, of Don Vicente Mexias, and Don Francisco Rovira, as assistant witness for want of a notary; that in consequence of this the said appraisers proceeded only to the valuation of the trees of said "the Verjel," which amounted to two thousand one hundred and fifty dollars, without ascertaining the boundaries nor the number of acres of land which the appraised trees occupied, nor mentioning the ten thousand acres of land as belonging to the estate of the deceased Dn. Jose Fish. But what does not admit of any doubt is that by virtue of the apprais'ment of those trees the sale of them at public auction took place and was made to Don Jose Fish, son of the deceased of the same name, for the sum of sixteen hundred and five dollars, a little more than two-thirds of said valuation, and consequently the fiscal has sufficient reasons for his decision of the twenty-seventh of February last to consider Don Jose Fish owner only of the land and trees mentioned in the said valuation, which is what was lawfully sold at public auction, because until then nothing appeared of the number of acres of which the said verjel consisted, a defect, in truth, easily observed by the appraisers which ordered to lay off the land. They should have done it with particular designation of the lands which properly belonged to the deceased Fish, from which defect this new appeal arises.

Under the circumstances the fiscal attorney thinks that in virtue of the proof which Fish has made in the proceedings he proved that 551 the place named the "Verjel" consisted of 10,000 acres of land, and that when he bought it he was undoubtedly under the impression that the ten thousand acres of land which his father enjoyed would be included in said sale. In regard to the balance of the land not occupied by the fruit trees, which have been appraised, it is evident that they are not fit for cultivation, and as to the error or negligence of the appraisers, Dn. Manuel Solano y Don Roque Leonardy, in not laying off the boundaries of that land, I consider it ought not to prejudice the rights which favor Don Jose Fish. From all these reflections to which these proceedings give rise, the fiscal attorney concludes and it appears to him that your excellency may order the boundaries of the "Verjel" to be marked off to the number of ten thousand acres annexed to the said "Vergel," and which he proved belonged to his father and he bought at public auction, notifying the defender of the estate of the deceased Dn. Jose Fish in case he should appeal on what has been decided on this proceedings in order that after these points have been delucidated he should remain in possession of the said ten thousand acres of land annexed to the said "Verjel," or your excellency will determine what you may think most proper, and with your usual justice.

JOSE ANTONIO
DE YGINNS.

Having examined the proceedings, it was decreed and ordered by Señor Don Bartolme Morales, colonel of the infantry of the royal armies, commandant of the *the* Third Battal/ion of Cuba, which garrisons this city of Saint Augustine, Florida, and political and military governor of
552 it and its province, he signs it on account of illness of the incumbent, on the sixteenth of May, 1795; which I attest.

MORALES.
LICENTIATE ORTEGA.

Before me,

JOSE DE ZUBIZARRTA,
Notary of Government.

On the same day the foregoing decree was made known to Don Jose Antonio Yginis for his official cognizance, which I attest.

ZUBIZARRETA, *Notary.*

On the same day it was notified to Don Jose Fish, which I attest.

ZUBIZARRETA, *Notary.*

ST. AUGUSTINE, FLORIDA, *13th of June, 1795.*

To decree more fully let notice be given to the defender of the estate of Don Jose Fish, and *and* the proceedongs returned.

LICENTIATE ORTEGAS.

Before me:

JOSE DE ZUBIZARRETA,
Notary of Government.

ST. AUGUSTINE, FLORIDA, *17th of June, 1795.*

Don Rafael Saavedra de Espinos, attorney-general of the city and defender of the estate of the deceased Don Jose Fish, who was a resident of this city, and in consequence of the proceeding commenced by Don Jose Fish, son of the aforesaid deceased, appear before your excellency, and in the manner most conformable to law state that I have examined with all the attention my limited capacity allows me what the son of the said Fish sets forth in favor of his rights, and find that up to this time he proceeded inadvertently at the time when he purchased at public sale the place called the "Verjel," as he ought to have shown at that time clearly and distinctly to what his petition referred; neverthe-
553 less, he now endeavors to remedy his inadverteney by the proofs which he has adduced in said proceedings. For these reasons, and agreeing with the well-founded exposition of the first officer of the royal com'troller's office, Don Jose Antonio Yguiniz, who perform the functions of his honor the fiscal attorney, whose exposition is in folio 27, in which reference is made to the lack of precaution with which the appraisers, Don Manuel Solana and Don Roque Leonardy, proceeded, who ought to have described at that time the boundary of said land, and by doing so they would not only have given full effect their commission, but would also have obviated the present litigation, and consequently it would have operated with entire effect in the present case and without any injury both to the estate and the mover of these proceedings, for

which reasons (it appears to me) you' excellency may grant to Don Jose Fish the ten thousand acres of land which his deceased father of the same name possessed, and your excellency may order according to your well-known judicious decrees, this being all I have to say as defender of the said estate in compliance with the discharge of my duty.

RAFAEL SAAVEDRADE DE ESPIONOSA.

Having examined these proceedings and seen the proof adduced in them by Don Jose Fish, it appears not only that his father of the same name possessed the ten thousand acres of land since the time of the old Spanish and in that of the British dominion, which possession he claims at the place named "the Verjel," which he purchased at public sale, but also that he offered a bid for the said land under which his purchase ought to be understood, which defect by not explaining it thus and at the time should not be prejudicial to him, and which was given cause for this litigation. His excellency says that declaring as he declares now,
554 and consequently orders that whether from the right that Fish has from the purchase of said land for the sum of $1,605, as shown by the public sale of the "Verjel," or by the right of ancient possession of his father of the mentioned 10,000 acres of land, or, finally, in consequence of the petition Fish that they should be granted him as a new settler, he be placed in possession of the said lands, which appears his father possessed, and is already laid off with the exception of the quarries, and also was not granted to his said father, and which the King has reserved, renewing the boundaries if necessary at the expense of the interested, and by the said appraiser, Don Manuel Solano, who in time of the old and new Spanish possession of this province laid off by order of the Government the aforesaid quarries in order to give possession of the lands which he claims to the father of the petition and which was done then, and let them be granted to him on the terms above set forth and giving him possession by the present notary, who is commissioned for the purpose, when with the said appraiser and some other workman that may be necessary, they shall assist someone who represent the royal treasury, a person whom the minister of the royal domain may depute for this purpose; all of which shall be made to appear on the proceedings with the taxation of the costs, which the interested party shall satisfy and this proceeding shall be held as concluded. It was thus decreed and ordered by Señor Don Bartolome Morales, colonel of the infantry of the royal armies, commandant of the 3rd battalion of Cuba, which garrisons this city of Saint Augustine, Florida, and political and military governor pro tempore of it and its province, he signs it on account of illness of the incumbent, and with the advice of his honor the assessor-general on the 19th of June, 1795, which I attest.

LICENTIATE JOSEF DE ORTEGA.

BARTOLOME MORALES.

555 Saint Augustine, on the same day, month, and year, the foregoing decree was notified to Don Jose Fish, which I attest.

ZUBIZARRTA, *Notary.*

On the same day it was intimated to Don Rafael Saavedra de Espinosa for his cognizance, which I attest.

ZUBIZARRTTA, *Notary.*

On the same day, month, and year it was communicated to the collector of the royal domain, Don Gonzale Zamoranous, for his fiscal cognizance, which I attest.

ZUBIZARRTA, *Notary.*

Proof of boundary and possession.

Being in the plantation called the "Verjel," situated on the island Saint Anastasia, on the 10th July, 1795, in conformity with what is provided in the foregoing decree we proceeded to the marking of the boundaries of the lands comprised in these proceedings. Don Manuel Solano, the appraiser appointed for the purpose, passing from said place to where the King's and private parties' quarries are located, and who, passing along the ancient boundaries with Don Jose Lorente, the chief master of royal works, who accompanied him in order to satisfy himself; Don Tades de Arrious, officer of the royal comptroller's office, for his fiscal cognizance, and I, the present notary, went placing the stakes, in order to mark out the said boundaries across the island and separate the said quarries, making known that all the rest except them were what corresponded to Don Jose Fish, who was also present, I, the said notary, in the discharge of the commission conferred upon me, put him in possession of the land marked out, leading him by the hand upon it, and riding together on horseback by various places until arriving at the dwelling house. All of which I did as a token of said possession, which he took quietly, peaceably, and without contradiction. In testimony of which and for due proof I have extended the present proceedings, which all sign, with the exception of Solano, who said he did not know how.

556 All of which I attest.

TADEO DE ARRIBAS.
JESSE FISH.
JOSE LORENTE.

Before me.

JOSE DE ZUBIZARRTA,
Notary of Government.

(Endorsed:) Furman vs. Mitchell. Filed in evidence July 6th, 1897. Marked "Complts. Exhibit V, H. H. Buckman. Translation of Exhibit U."

557 TUESDAY, *the 27th July, 1841.*

The court met pursuant to adjournment.

Present, Elias B. Gould, judge.

Whereas on the petition of Andrew Pacetti, executor of the last will and testament of Margaretta Bivas Santana, setting forth that the original will of the testatrix and the testamentary proceedings thereon have been lost, destroyed, or mislaid, and praying this court that a probate copy of said last will & testament be substituted, recorded, and filed as the original, which said probate copy (as is alleged) is annexed to and made a part of his said petition. And the facts therein stated sufficiently appearing from the affidavit of the said petition, and from the affidavits of Pedro Benet, Jose Pomar, and Jose J. Andreu, who appeared before

the court to testify that they were present at the execution of the said will by the testator; that she bequeathed all her estate to Barbara Triay, the wife of the petitioner; that they subscribed their names thereto as subscribing witnesses; and that they verily believed that the probate copy exhibited to them is a true copy of the original will; and it also sufficiently appearing that the said testament of writing so exhibited is a genuine probate copy of the will of the testatrix, issued and delivered according to the Spanish forms of law, it is

Ordered, That the same be received and recorded as the last will and testament of Margaritta Bivas de Santana, decd., and that certified copies of the same be delivered to the same, and of the letters testamentary thereon, whenever request shall be made by the parties interested.

Estate of George Cook. Accounts rendered.

558 Estate of Abraham Connor: Ordered, that Mary Connor, administratrix, file accounts of said estate on or before Wednesday morning the 4th August next, at 10 o'clock, under the penalty of the law.

Estate of George I. F. Clarke: Ordered, that John M. Fontane, executor, file inventory and accounts of said estate on or before 10 o'clock of Wednesday morning the 4th August next, under the penalty of the law.

Estate of George Clarke: Ordered, that George Clarke, executor, file inventory and accounts of said estate on or before 10 o'clock of Wednesday morning next, the 4th August, under the penalty of the law.

Estate of Pedro Cocifacio: Ordered, that Fernd. M. Arredondo, administrator of said estate, file accounts on or before 10 o'clock of Wednesday morning the 4th August next, under the penalty of the law.

Estate of Wm. Garvin: Ordered, that Felicia M. Garvin, administratrix, file inventory and accounts of said estate on or before 10 o'clock of Wednesday morning the 4th August next, under the penalty of the law.

Estate of Bartholome Genovar: Ordered, that Antonio Genovar, administratrix, file inventory and accounts of said estate on or before 10 o'clock of Wednesday morning the 4th August next, under the penalty of the law.

Estate of Thomas Griffins: Ordered, that Rafale D. Fontane, executor, file inventory and accounts of said estate on or before 10 o'clock of Wednesday morning the 4th August next, under the penalty of the law.

559 Estate of Juan Genople: Ordered, that Estaban Arnau, administrator, file inventory and accounts of said estate on or before 10 o'clock of Wednesday morning the 4th August next, under the penalty of the law.

Estate of Ann Geiger: Ordered, that John L. Phillips, administrator, file accounts of said estate on or before 10 o'clock of Wednesday morning the 4th August next, under the penalty of the law.

Estate of David Davis: That notice be given to Lewis Fleming, one of the securities, of no accounts being filed relation to the said estate.

Estate of Philip Edinburgh: Accounts filed.

Estate of Thomas Fitch: Ordered, that Thomas Butler, one of the administrators, file accounts of said estate on or before the 1st September, under the penalty of the law.

Estate of Francis J. Fatio: Ordered, that notice be given to Charles Robinson, one of the securities, of no accounts being filed relating to said estate.

Estate of Henry Ferris: Accounts rendered.

Estate of Peter Fushard: No order.

Estate of Sarah Fish: Ordered, that Richard B. Furman, John Haynsworth, and Charles M. Furman, executors, file inventory and accounts of said estate on or before the 1st day of September, under the penalty of the law.

560 It is ordered that all other business pending before this court be continued until Saturday morning next, the 31st July instant.

The court adjourned to Saturday morning the 31st July.

E. B. GOULD, *Judge.*

Test:

P. B. DUMAS, *Clerk, C. C.*

State of Florida, St. Johns County:

I, D. L. Dunham, clerk of the circuit court for St. Johns County, Florida, do hereby certify that the foregoing instrument of writing is a true and correct copy of the minutes of the county court as had on Tuesday the 27th July, 1841, and found of record in county court minute book "B," page 168 to 170, inclusive, the said minute book "B" being one of the records of this office of which I am custodian.

In witness whereof I have hereunto set my hand & the seal of the circuit court, this 18th day of January, A. D. 1897.

[SEAL.] D. L. DUNHAM, *Clk., Cir. Ct.*

(Endorsed:) Defts Exhibit = 1. Furman v. Mitchell. Filed in evidence Jay. 19, 1897. H. H. Buckman, master.

561 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Nov. 7th, 1896.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of so much of the record of the President's proclamation No. 263, dated March 8, 1839, as relates to Tp's 7, 8, 9 south, range 30 E., State of Florida, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] E. F. BEST,
Act. Commissioner of General Land Office.

(263) BY THE PRESIDENT OF THE UNITED STATES.

In pursuance of law, I, Martin Van Buren, President of the United States of America, do hereby declare and make known that a public sale will be held at St. Augustine, in the Territory of Florida, on Monday, the tenth day of June next, for the disposal of the unappropriated vacant public lands to which no "private claims" are alleged under existing laws, within the limits of the undermentioned townships and fractional townships, to wit:

* * * * * * *

At the same place in continuation, commencing on Monday, the twenty-fourth day of June next, for the disposal of the unappropriated

vacant public lands to which no "private claims" are alleged under existing laws, as are situated within the limits of the undermentioned townships and fractional townships, to wit: South of the base line
562 and east of the meridian,

* * * * * * *

Fractional townships seven, eight, nine, and ten, townships eleven, twelve, thirteen, fourteen, fifteen, sixteen, and seventeen, of range thirty.

* * * * * * *

Lands appropriated by law for the use of schools, military, or other purposes, will be excluded from sale.

The sales will each be kept open for two weeks (unless the lands are sooner disposed of), and no longer, and no private entries of land in the townships so offered will be admitted until after the expiration of the two weeks.

Given under my hand, at the city of Washington, this eighth day of March, anno Domini, 1839.

M. VAN BUREN.

By the President:
JAS. WHITCOMB,
Commissioner of the General Land Office.

Notice to preemption claimants.

Every person claiming the right of preemption to any of the lands designated in the above proclamation, is requested to prove the same to the satisfaction of the register and receiver and make payment therefor, as soon as practicable after seeing this notice, in order that the claim may be adjudicated by those officers, agreeably to law, in due time prior to the day appointed for the commencement of the public sale; and all claims not duly made known and paid for prior to the date aforesaid are declared by law to be forfeited.

JAS. WHITCOMB,
Commissioner of the General Land Office.

563 (Endorsed:) Defts. Exhibit 3. Furman v. Mitchell. Filed in evidence Ja'y. 19, 1897. H. H. Buckman, master. Pres't's proclamation throwing lands open to entry.

564 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 31, 1896.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of President's order, dated February 1, 1883, reserving lot No. 2, of section 21, township 7 south, range 30 east, Florida, for light-house purposes, is a true and literal exemplification of the original of said President's order on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] E. F. BEST,
Acting Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,
Washington, 30 Jan'y, 1883.

SIR: I have the honor to recommend that lot No. 2, sect. 21, T. 7 S., R. 30 E., Florida, containing 17 acres, be reserved for light-house purposes.

This recommendation is made on request of the Secretary of the Treasury and the Light-House Board.

The Commissioner of the General Land Office informs me that said lot is vacant public land, and that he knows of no objection to its reservation as requested.

Very respectfully,

[SEAL.] H. M. TELLER,
Secretary.

The PRESIDENT.

(Endorsed:) Defts' Exhibit 4. Furman v. Mitchell. Filed in evidence, Jan'y 19, 1897. H. H. Buckman, master. President' order, light-house res.

565 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 31, 1896.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of President's order, dated May 4, 1893, reserving certain land in township 7 south, range 30 east, Florida, for military purposes, is a true and literal exemplification of the original of said President's order on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] E. F. BEST,
Acting Commissioner of the General Land Office.

EXECUTIVE MANSION,
Washington, May 4th, 1893.

The following-described lands on Anastasia Island, in the State of Florida, are hereby reserved and set apart for military purposes and proclaimed to be a military reservation, viz:

The southeast quarter of section number twenty-one; all of fractional section number twenty-two; the northeast quarter of the northeast quarter of section number twenty-eight; and all of section number twenty-seven, all of said lands lying in township seven south, and range thirty east, and being described in United States Land Office survey of 1855. Also, all the lands formed by the sea since said survey,
566 lying east of said lands and between the north boundary line prolonged of said southeast quarter of section number twenty-one and the south boundary line prolonged of said section number twenty-seven.

GROVER CLEVELAND.

(Endorsed:) Defts' Exhibit 5. Furman v. Mitchell. Filed in evidence Jan'y 19, 1897. H. H. Buckman, master. President's order, military reservt.

567 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 31, 1896.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of President's order, dated June 22, 1869, reserving certain land in section 21, township 7 south, range 30 east, Florida, for light-house purposes, is a true and literal exemplification of the original of said President's order on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] E. F. BEST,
Acting Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 22nd June, 1869.

SIR: I have the honor to recommend that lot one (1) of section twenty-one (21), township seven (7) south, range thirty (30) east, Flor., be reserved for light-house purposes.

The chairman of the Light-House Board requests this reservation to be made, and the Commissioner of the General Land Office states that no steps have been taken looking to the disposal of said tract.

I am, sir, very respectfully, your ob't servant,

W. T. OTTO,
Acting Secretary.

The PRESIDENT.

(Endorsed:) Defts. Ex. 6. Furman v. Mitchell. Filed in evidence Jany. 19, 1897. H. H. Buckman, master. Copy President order light-house reservation.

568 R. G. 4–207. W. H. L.
A. D. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Nov. 7th, 1896.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a report to the honorable Secretary of the Interior by the Assistant Commissioner of the General Land Office, dated June 27, 1888, in relation to lands on Anastasia Island, Florida, is a true and literal exemplification from the records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] E. F. BEST,
Acting Commissioner of the General Land Office.

* * * * * * *

D. W. D. S. S. D. L. W. O. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 27, 1888.

Hon. WM. F. VILAS,
Secretary of the Interior.

SIR: The letters of the honorable Acting Attorney-General received here on the 9th instant, by reference from the Department, is herewith returned, and I have the honor to report in duplicate, as follows:

The report on the claim of Sarah Fish to 10,000 acres of land lying on St. Anastasia Island, Florida, will be found printed in the American State Papers, Duff Green's edition, vol. 3, p. 661; vol. 4,
569 pp. 258, 268, 289, 300, and 465. (See same vol., pp. 280, 283, 296, 431, and 466.)

This report was before Congress when it passed the act of February 8, 1827, Stats. 4, p. 202. For letters transmitting reports, see Am. State Papers, Gales and Seaton's edition, vol. 4, pp. 155, 255, and 261.

Attention is invited to the acts of Congress of May 23, 1828, and May 26, 1830, Stats. 4, pp. 284 and 405.

If these two acts provide for this claim the parties in interest have not accepted a confirmation thereunder, by relinquishing the excess over a league square.

I enclose herein a plat of the official survey of said island, copy of so much of the tract books of this office as shows the present status of these lands, and copy of the protest filed here by C. M. Furman, dated June 16, 1870.

For the report on the claims of Nicholas Rodriquez and heirs of F. X. Sanchez, shown on the plat, see Am. State Papers, Green's edition, vol. 5, p. 420, and vol. 4, pp. 161 and 214.

The private claim of Rodriquez and Sanchez have not yet been adjudicated by this office.

The Fish claim, for want of confirmation by this Government, can not be passed for patent, nor can it be, in its present condition, regarded as resting upon anything but the equities in the case.

Very respectfully, your obt. serv't,

T. J. ANDERSON,
Asst. Commissioner.

(Endorsed:) Defendant's Exhibit 7. Filed in evidence Jany. 19th, 1897. H. H. Buckman, master. Rept. Asst. Com. to Secty. Int.

570 G.
A. D. S. 4–207. W. H. L.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Nov. 7th, 1896.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter from this office to the U. S. surveyor-general of Florida, dated March 28th, 1887, in relation to lands on Anastasia Island, Florida, is a true and literal exemplification from the press copy record of said letter on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

E. F. BEST,
Acting Commissioner of the General Land Office.

D. W. H. W. W. D. S. R. A.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Mch. 28, 1887.

U. S. SURVEYOR-GENERAL,
Tallahassee, Florida.

SIR: I enclose herein a copy of a letter dated July 16th, 1870, addressed to this office by C. M. Furman, of Charleston, South Carolina, protesting against the Government's disposing of lands, under the public land laws of the United States, located by survey in tps. 7, 8, and 9 S., R. 30 E., Florida, known as Anastasia Island. Mr. Furman alleges that these lands are covered by a Spanish grant, and that he is the owner of this Spanish title.

571 After survey a large area of these lands were approved to the State of Florida, as "swamp and overflowed lands," and a portion reserved for light-house purposes.

There are also located on this island two small claims alleged to be private land claims. In addition to the foregoing disposition of said lands, numerous parties are attempting to acquire title to portions of said island under the laws governing the disposal of the public domain.

It is understood by this office that Mr. Furman is dead, and this may account for his never having, since said protest, taken any steps here to sustain his allegation of ownership of the lands in question.

This office is entirely ignorant of who are the heirs of said Furman, and therefore hereby instruct you to take such measures to learn the names and post-office address of these heirs as your judgment may suggest.

You may be aided in your search for said heirs by corresponding with the probate judge, postmaster, or mayor of the city of Charleston.

If you are successful in learning who the present parties in interest are as successors to the Furman estate, you will call their attention to said protest and notify them that they will be allowed ninety days from the date of your notice within which to file in your office any evidence which they may have to sustain the allegation contained in the Furman protest, and at the same time notify them that a failure to file evidence in the case within the time allowed will be construed by this office as an abandonment of all claim to the lands embraced by said island.

In the event evidence is filed in your office pursuant to your notice in in this case, you will, after the expiration of the ninety days given,

572 take up the record as it shall then appear in your office and all the questions presented by such record, and give due notice to the proper parties of your decision, and at the same time inform them of their right of appeal therefrom to this office under the rules of practice

now in force, and after the time for appeal has expired you will, without delay, forward the papers in the case to this office.

Respectfully,

WM. A. J. SPARKS,
Commissioner.

(Endorsed:) Defts. Ex. 8. Filed in evidence Jany. 19th, 1897. H. H. Buckman, master. Letter land offered to surveyor-general, Florida.

573 G.
A. D. S. 4-207. W. H. L.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Nov. 7th, 1896.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter from this office to Charles M. Furman, dated August 13, 1889, together with a copy of letter of August 10, 1889, inclosed therein, in relation to lands on Anastasia Island, Florida, is a true and literal exemplification from the record of said letters in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.] E. F. BEST,
Acting Commissioner of General Land Office.

* * * * * * *

D. W. D. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 13, 1889.

CHARLES M. FURMAN, Esq.,
Greenville, S. C.

SIR: In reply to the inquiries contained in your letter of the 2nd instant, received here by reference from the Department, I have to state that the applications to acquire title to lands on Anastasia Island, Florida, under the laws applicable to the disposal of the public lands of the United States, have not yet been acted upon.

I enclose herein a copy of office letter of the 10th instant, addressed to Hon. W. H. Perry, of your city, upon the subject.

Respectfully,

W. M. STONE,
Acting Commissioner.

574 D. W. D. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 10, 1889.

Hon. W. H. PERRY,
Greenville, S. C.

SIR: I am in receipt, by reference from the Department, of your letter to the honorable Secretary of the Interior, dated the 3rd instant, relative to the claim of C. M. Furman and others claiming lands in Florida upon Anastasia Island.

The applications to enter these lands with scrip, &c., have not yet been acted upon; and if Mr. Furman and others to whom you refer will file their appearance here and give their post-office address, when these matters are acted upon they will be notified of the action taken.

Very respectfully,

W. M. STONE,
Acting Commissioner.

(Endorsed:) Defendants' Exhibit 9. Filed in evidence 19 Jan'y, 1897. H. H. Buckman, master. Letter Land Office to Furman.

575 [Law offices of Charles Boyle, Charleston, S. C. Summerville, S. C.]

SUMMERVILLE, S. C., *April 12th, 1887.*

To Hon. W. D. BLOXHAM,
U. S. Surveyor Gen'l, Tallahassee, Fla.

DEAR SIR: I have received a letter from the Hon. W. A. Courtnay, of Charleston, requesting me to give you the names and post-office addresses of the heirs of the late C. M. Furman of that place.

There are C. M. Furman, of Greenville, So. Ca.; J. R. Furman, of Kansas City, Mo.; and Bolivar B. Furman, of Sommerville, So. Ca.

Trusting that the above information will prove satisfactory, I have the honor to be, sir, your obedient servant,

BOLIVAR B. FURMAN.

(Endorsed:) From Bolivar B. Furman, Summerville, S. C. Rec'd April 14th, '87.

576 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
OFFICE OF U. S. SURVEYOR-GENERAL,
Tallahassee, Fla., April 13th, 1887.

CHAS. M. FURMAN, Esq.,
Atty. at Law, Greenville, S. C.

DEAR SIR: I am instructed by the Hon. Commissioner of the General Land Office at Washington, D. C., to ascertain, if possible, the names and post-office addresses of the heirs of the late C. M. Furman, of Charleston, S. C., in order to call their attention to certain matters of the said heirs in connection with the General Land Office. If you can render any

assistance in this matter by giving the names and post-office addresses of the said heirs you will confer a favor upon this office.

Please be so kind as to reply and oblige.

Yours, respectfully, W. D. BLOXHAM,
Surveyor-General.

E, April 18, '87 2 s.
Answering yours of 13th.

OFFICE OF C. M. FURMAN, ATTORNEY AT LAW,
Greenville, S. C., Apr. 18, 1887.

W. D. BLOXHAM, Esq.,
U. S. Sur. Genl., Tallahassee, Fla.

MY DEAR SIR: Yours of 13th to hand last night. I am the owner of a ½ interest in all the estate, real and personal, of C. M. Furman, decd. The other half interest is owned by B. B., J. K., and Julia Furman, nephews and nieces of the decd. I represent them in all matters connected therewith.

I am, yours, very truly, C. M. FURMAN.

(Endorsed:) For reply and notice, see letter book, Ap. 21, 1887.

577 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
OFFICE OF U. S. SURVEYOR-GENERAL,
Tallahassee, Fla., April 14th, 1887.

Mr. J. K. FURMAN,
Kansas City, Mo.

DEAR SIR: I am instructed by the Hon. Commissioner of the General Land Office at Washington, D. C., to ascertain, if possible, the names and post-office addresses of the heirs of the late C. M. Furman, of Charleston, S. C., in order to call their attention to certain matters of interest to the said heirs in connection with the General Land Office.

If you can render any assistance in this matter by giving the names and post-office addresses of the said heirs, you will confer a favor upon this office.

Please be so kind as to reply and oblige,

Very, respectfully, W. D. BLOXHAM,
Surveyor-General.

E.

KANSAS CITY, MO., *Ap. 22/87.*

Hon. W. D. BLOXHAM,
Surveyor-General, Tallahassee, Fla.

DEAR SIR: Your favor of the 14th, inst. to hand. Altho' I am puzzled to know how you knew I was in K. C., and an heir of C. M. Furman, of S. C., and yet did not know who the other heirs were, all of whom are residents of that State; they are my cousin, C. M. Furman, atty. at law, Greenville, S. C.; my brother, Bolivar B. Furman, Summerville, S. C., and myself, Irvine K. Furman, clerk in post-office here in K. C., Mo., also my uncle's widow, Julia C. Furman, who is in
578 Sumter, S. C., living with Dr. Bossard, her brother, in whose care her letters are addressed, and my great aunt, Ann E. Furman,

who lives in Greenville, S. C., and is the sister of C. M. Furman, deceased. Now, I have given you the information to the best of my ability, and remain with some curiosity,

Very respectfully, IRVINE K. FURMAN.

(Endorsed:) Irvine K. Furman, of Kansas City, Mo. See letter Apr. 14, '87, from surveyor-general.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
OFFICE OF U. S. SURVEYOR-GENERAL,
Tallahassee, Fla., April 1st, 1887.

Mr. J. K. FURMAN,
Kansas City, Mo.

DEAR SIR: Referring to my letter of April 14th, /87, and having been informed that you are one of the heirs of the late C. M. Furman, of Charleston, S. C., I enclose herewith a copy of a letter dated July 16th, 1870, addressed to the Hon. Commissioner of the Gen. Land Office, by C. M. Furman, of Charleston, S. C., protesting against the Government disposing of lands under the public land laws of the United States located by survey in Twps. 7, 8, and 9 S., R. 30 E., Florida, known as Anastasia Island.

Furman alleges that these lands are covered by a Spanish grant and that he is the owner of this Spanish title. The Hon. Commissioner in his letter "D" of March 28th, 1887, states:

"This office is entirely ignorant of who are the heirs of said Furman, and therefore hereby instruct you to take such measures to learn the names and post-office addresses of these heirs as your judgment may suggest.

579 "If you are successful in learning who the present parties in interest are as successors to the Furman estate, you will call their attention to said protest and notify them that they will be allowed ninety days from the date of your notice within which to file in your office any evidence which they may have to sustain the allegation contained in the Furman protest, and at the same time notify them that a failure to file evidence in the case within the time allowed will be construed by this office as an abandonment of all claim to the lands embraced by said island."

Your attention is respectfully called to the foregoing and you will oblige this office by a reply.

Very respectfully, W. D. BLOXHAM,
Surveyor-General.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
OFFICE OF U. S. SURVEYOR-GENERAL,
Tallahassee, Fla., April 21st, 1887.

BOLIVAR B. FURMAN, Esq.,
Summerville, S. C.

DEAR SIR: Referring to your letter of April 12th, /87, in reference to the heirs of the late C. M. Furman, Charleston, S. C., I enclose herewith a copy of a letter dated July 16th, 1870, addressed to the Hon.

Commissioner of the Gen. Land Office by C. M. Furman, of Charleston, S. C., protesting against the Government disposing of lands under the public-land laws of the United States located by survey in Twps. 7, 8, and 9 S., R. 30 E., Florida, known as Anastasia Island. Mr. Furman alleges that these lands are covered by a Spanish grant and that he is the owner of this Spanish title.

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Very respectfully,

W. D. BLOXHAM,
Surveyor-General.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
OFFICE OF U. S. SURVEYOR-GENERAL,
Tallahassee, Fla., April 21st, 1887.

C. M. FURMAN, Esq.,
Atty. at Law, Greenville, S. C.

DEAR SIR: Your letter of April 16th recd., and in reply I enclose herewith a copy of a letter dated July 16th, 1870, addressed to the Hon. Commissioner of the General Land Office by C. M. Furman, of Charleston, S. C., protesting against the Government disposing of lands under the public-land laws of the United States, located by survey in

581 townships 7, 8, and 9 S., R. 30 E., Florida, known as Anastasia Island. Mr. Furman alleges that these lands are covered by a Spanish grant, and that he is the owner of this Spanish title.

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Your attention is respectfully called to the following and you will oblige this office by a reply.

Very respectfully,

W. D. BLOXHAM,
Surveyor-General.

582 Answering yours of

OFFICE OF C. M. FURMAN, ATTY. AT LAW,
Greenville, S. C., Apr. 25, 1887.

Hon. W. D. BLOXHAM,
Sur. Genl., Tallahassee, Fla.:

DEAR SIR: I am in receipt of your favor of 21st Apr. I have notified Genl. W. S. Walker, of Jacksonville, Fla., of the contents thereof. Genl. Walker represents the heirs of C. M. Furman, deceased, in regard to this property (Anastasia Island), and will communicate with your office.

I am, very respectfully,

C. M. FURMAN.

(Endorsed:) E. Ap. 28, 1887. Letter from C. M. Furman, of Greenville, S. C., stating that heirs are represented by Genl. W. S. Walker, of Jacksonville, Fla., who will communicate with this office.

I, W. H. Milton, jr., do hereby certify that I am the United States surveyor-general for the surveying district of Florida; that the maps and records of surveys relating to the United States land and Spanish grants of lands in the State of Florida, and the Spanish archives to lands in East Florida, and the proceedings before the commissioner for the ascertaining of titles to lands in East Florida are recorded or left among the records in my official custody; that I have compared the foregoing documents from pages 1 to 12, inclusive, with the original in my custody, and do hereby certify that they are true copies and literal transcripts of the original documents found among the documents belonging to the records and files in the office of the U. S. surveyor-general of Florida, in my custody.

Witness my hand and private seal (having no official seal) this 25th day of September, A. D. 1896.

[SEAL.]

W. H. MILTON,
U. S. Surveyor-General of Florida.

(Endorsed:) Defts.' Exhibit 10. Filed in evidence Jany. 19th, 1897. Copies certain letters land office and Furman's.

583 J. R. 82, 269–96. M. L.

G. M. C.

"G." 4–207 a.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 21, 1896.

I, S. W. Lamoreux, Commissioner of the General Land Office, hereby certify that the annexed copies are true and literal exemplifications of letter of Venancio Sanchez to Jacob D. Cox, Secretary of the Interior,

dated March 19th, 1868; of letter of said Sanchez to Jos. S. Wilson, Commissioner of the General Land Office, dated September 16th, 1868; of letter of C. M. Furman to Jos. S. Wilson, Commissioner of General Land Office, dated July 16, 1870; of letter of said Furman to the Secretary of the Interior, dated August 2, 1889; of the letter of said Furman to the Commissioner of General Land Office, dated August 17, 1889, and of the petition of C. M. Furman, Irvine R. Furman, Bolivar B. Furman, and J. R. Furman, asking the Commissioner of General Land Office to issue patent for Anastasia Island, Florida; all in relation to title to said island, as appears from the files and records of this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

S. W. LAMOREUX,
Commissioner of General Land Office.

584

C. O.

ST. AUGUSTINE, *March 19th, 1868.*

To the Hon. JACOB D. COX,
Secretary of the Interior, Washington, D. C.:

DEAR SIR: I am largely interested in several Spanish grants of land, some of which have been deemed by the U. S. commissioners as good, valid Spanish grants, and they have recommended the same to the Congress of the United States for confirmation. They did not confirm the same from the fact that they had no power to confirm any grant which exceeded 3,500 acres, and as I have never heard whether such grants have been confirmed or not, will you be kind enough to give me any information which you think might be beneficial? One of the principal grants of which I allude to is Jesse Fish's grant for 10,000 acres of land on the island of St. Anastasia, which, by reference to the American State Papers, vol. 4, folios 468 & 469, you will perceive that the same was a purchase made by the said Jesse Fish at public auction from the Spanish Government on the 31st of Jan., 1712.

You will very much oblige me if you would, at your convenience, let me know what is the law on this subject, and if, in your opinion, there is anything that can be done by me at this time to enable me to have the whole or any part of the grants confirmed. I mean such as have been recommended by the U. S. commissioners for confirmation. Your kind attention to the above will greatly oblige

Your ob't servant,

VENANCIO SANCHEZ.

585

WASHINGTON, D. C., *Sept. 16th, 1868.*

Hon. JOS. S. WILSON,
Commissioner General Land Office.

SIR: For the heirs of Jesse Fish, dec'd, I have the honor to make application for the issuing of patent for a tract of land said to contain 10,000 acres, situated on Anastasia Island, East Florida, and confirmed

by the board of commissioners as claim No. 21, report No. 3, Sec. American State Papers, vol. 4, p. 466.

Very respectfully, your obedient servant,

VENANCIO SANCHEZ.

Address, V. Sanchez, St. Augustine, Florida.

WASHINGTON, *16th July, 1870.*

To the Hon. JOS. S. WILSON,
Comr. General Land Office, Washington:

I respectfully request you to notice that I claim to be the owner of St. Anastasia (or Fish's) Island situate on the east coast of Florida and extending from St. Augustine Bar to Matanzas Bar, said to contain ten thousand acres. That I hold under a title derived from Spanish grants made previous to 1763, when Florida was ceded to England by Spain, and continuous possession of said property has been had from that time to the present by the party who then acquired to property and by his heirs. And I claim that no grant or patent be issued to the State of Florida or to any other party, giving title to the said island or to any part thereof.

Respectfully, your most obedient,

C. M. FURMAN,
Chalreston, S. C.

586 (Endorsed on back of last sheet:) No. 7. C. M. Furman, esq., present. Vol. 8,935. July 16th, 1870.

Files letter in the nature of caveat against disposal of any part of Anastasia Island, Florida, to State of Florida or any other party, be claiming ownership of said island as successor in interest of Jesse Fish, the alleged grantee.

(Tracts noted on tract book vol. 6, St. Augustine.) H. F. Smith. D. Sept. 16th, 1870, July 15/70.

GREENVILLE, SOUTH CAROLINA, *Aug. 2nd, 1889.*

To the SECRETARY OF THE INTERIOR,
Washington, D. C.

SIR: As one of the heirs of Don Jose Fish I claim title with my co-heirs to the island of St. Anastasia, near St. Augustine, Florida.

It has been reported that the Commissioner of the Land Office at Washington is about to declare said island open for entry, and in consequence a large number of persons have made application to enter homesteads on said island. Their application having been filed at the land office at Gainesville, Florida, many of them have gone upon the island and in violation of our rights have taken possession of portions thereof. Our title rests upon a grant made to Don Jose Fish by the Spanish Crown in 1792, followed up by continuous possession ever since. This was an absolute grant, complete and without future conditions, such a grant
587 as under the decision of the U. S. Supreme Court needed no confirmation by Congressional act (as I see U. S. vs. Arredondo, 6 Peters, and U. S. vs. Perchemon, 7 Peters, and many others); nevertheless the commissioners appointed by Congress to determine the validity of Spanish grants in Florida reported this grant valid; they did not confirm it, as they had no authority to do so in cases where grants exceeded

3,500 acres. See full history of case in U. S. State Papers (Duff Green edition, volume IV).

Will you please inform me whether the Government sets up any claim to these lands, and if so in what way we may obtain a hearing before the Department, and especially whether the report that the land office is about to open them for entry is correct.

Upon motion of one of the Florida Senators a resolution was passed by the U. S. Senate at its last session asking an opinion from the Attorney-General as to whether the U. S. had any rights in said island. Under this resolution I had filed in that office a brief by our attorney, H. R. Garden, of N. Y. The Atty. General, however, failed to make a report to the Senate, and so the matter stands open.

Yours, very respectfully,

CHAS. M. FURMAN.

(Endorsed on back of page:) Vol. 8, p. 159. Department of the Interior. General. S. & R. R. Div. Aug. 5th, 1889, 93,552. Aug. 7th, 1889. Received. F. A. W. Dept. of the Interior, Aug. 5th, '89. Respectfully refd. to the Genl. Land Office, E. W. Dawson, chief clerk.

Furman, Chas. M., Greenville, S. C., No. 23, Aug. 2d, '89. Relative to the ownership in the island of St. Anastasia, near St. Augustine, Fla. Refd. Div. D. Aug. 9, '89. M. S. L. Ans. Aug. 13/89.

588 "D."

OFFICE OF FURMAN AND FURMAN, ATTORNEYS AT LAW,
Greenville, S. C., Aug. 17th, 1889.

To the COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

DEAR SIR: Your letter of Aug. 10th, 1889, with enclosed copy letter to Hon. W. H. Perry, is to hand.

You state that "if Mr. Furman and others to whom you refer will file their appearance here and give their post-office address, when these matters are acted upon they will be notified of the action taken."

I respectfully protest against the issue of patents, either to homestead claimants or to holders of land scrip, on the ground that the island of Anastasia was granted to Jesse Fish, jr. (otherwise called Don Jose Fish), by the Spanish Government, through Morales, governor, and Ortega, assessor-general, June 17th, 1795, which is fully set forth in American State Papers, and that said island has been held continuously by the heirs of Fish up to date, with the exception of a small part thereof known as the King's quarries.

Very respectfully,

C. M. FURMAN.

To the honorable the COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: We, the undersigned, sole heirs at law of Sarah Fish, deceased, respectfully ask that a patent issue for Anastasia Island, the title to which was confirmed to the said Sarah Fish by an act of Congress approved May 23rd, 1828, being private land claim No. 21, reported upon by the

commissioners of private land claims in Florida, in report in
589 American State Papers, Vol. IV, pages 283, 300, & 465 (Duff Green edition).

Very respectfully,

C. M. FURMAN.
IRVINE R. FURMAN.
BOLIVAR B. FURMAN.
J. R. FURMAN.

(Endorsed:) Defts.' Exhibit 11. Furman vs. Mitchell. Filed in evidence Jany. 9, 1897. H. H. Buckman, master. Copy letters of Sanchez & Furman & petition to Land Deft., U. S.

590 J. R. 79067. M. L. G. M. C.

4–207a.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 13th, 1896.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copies are true and liberal exemplifications of the decision of the General Land Office, dated August 2, 1890, of the appeal to the Hon. Secretary of the Interior, dated September 30, 1890, and of his decision, dated June 20, 1893, all in relation to the claim of Jesse Fish, involving title to Anastasia Island, Florida, as appear from the files and records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.]

E. F. BEST,
Acting Commissioner of General Land Office.

591 "D." W. O. S.
I. R. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 2, 1890.

REGISTER AND RECEIVER,
Gainesville, Fla.

GENTLEMEN: Nearly the whole of the land unpatented embraced by "Anastasia Island," in Tps. 7, 8, and 9, S. R. 30 E. Florida, is now claimed by different parties under various laws governing its disposal as public land belonging to the United States.

Upwards of 1,400 acres of this island have been selected by the State as swamp and overflowed lands and patents issued therefor.

Two private claims have been located by survey on this island. These private claims are still pending before this office unpatented.

Nearly fifty applications to acquire title to lands on this island are found on file here, having been forwarded to this office on appeal from your rejection of the same.

Your rejections of said applications were based upon the ground that the whole of said island is covered by the private claim of the heirs of Don Jose Fish.

C. M. Furman, of Greenville, South Carolina, claims to be one of the legal representatives of said Fish; and as such, protests against the disposal of the lands on said island under the public land laws of the United States.

If this land is private property, belonging to the Fish representatives, then your rejection of said applications to enter the same as public land should be sustained; if not, your action in the matter should be overruled.

592 The evidence upon which this Fish claim rests will be found printed in the American State Papers, Duff Green's edition, vol. 4, 283, 300, and 465 to 471 inclusive.

On page 283 of this volume of State Papers the commissioners have entered this Fish claim as No. 21 of their report No. 3.

This report is dated December 31, 1825, and is headed "Register of claims to land exceeding 3,500 acres in East Florida, which are founded on patents or royal titles derived from the Spanish Government, and which, in the opinion of the commissioners, are valid."

The letter of the commissioners transmitting to the Secretary of the Treasury this, with other reports made by them, will be found on page 275; and the letter of the Secretary of the Treasury forwarding these reports to Congress will be found on page 460 of said State Papers.

Congress, in acting upon these reports, confirmed those claims recommended for confirmation, whose area was under the quantity of 3,500 acres. See act of February 8, 1827, Stats. 4, p. 202.

By act of Congress approved May 23, 1828, Stats. 4, p. 284, those claims having an area greater than 3,500 acres were confirmed to the extent of a league square, provided the claimants released the excess.

This island contains upwards of 6,661 acres, as some of the marsh lands have not yet been surveyed.

A league square contains 4,438.68 acres. See case of Mitchell et al. vs. The United States, 15th, Peters, page 57.

Those representing the Fish claim have never released this excess, either under the 2d section of said act of May 23, 1828, or under 8th section of the act of May 26, 1830, Stats. 4, p. 405, which only allowed them one year from its date to make such release, nor have they secured a confirmation in any other manner.

It appears that subsequent to the date when it is alleged that said island was granted to Fish, a portion of the lands comprising this island were granted to Francis X. Sanchez. See vol. 4, of said State Papers, page 214.

593 The United States extended the public surveys over this island in 1834 and 1835.

The 4th section of the act of May 8, 1822 (Stats. 3, p. 709), "That every person, or the heirs or representatives of such persons, claiming title to lands under any patent, grant, concession, or order of survey dated previous to the twenty-fourth day of January, one thousand eight hundred and eighteen, which were valid under the Spanish Government or by the law of nations, and which are not rejected by the treaty ceding

the territory of East Florida to the United States, shall file before the commissioners, his, her, or their claims, setting forth particularly its situation and boundaries, if to be ascertained, with the deraignment of title, where they are not the grantees or original claimants."

This act, like the act of March 3, 1851 (Stats. 9, p. 631), required the claimants to present their claims for confirmation, whether they were based upon complete or incomplete titles.

The Supreme Court of the United States held in the case of Bottiller vs. Dominguez (U. S. 130, p. 238), that claims derived from the Spanish and Mexican Governments had no validity until they had been presented and confirmed as required by the laws of this Government.

The "Fish claim" has been presented, but the claimants have failed to comply with the conditions imposed by Congress, that is: Release the lands claimed in excess of a league square, consequently the same has never been confirmed and has no validity before the Land Department of this Government.

This ruling does away with your objection to allowing the various applications to enter said lands as vacant public lands belonging to the United States.

If an appeal is not taken from this ruling, or if taken and this ruling made final, the various papers now on file here, which have been forwarded on appeal from your rejection of the application to enter
594 lands on this island on account of said Fish claim, will be returned to you, that you may act upon the same according to their merits and settle all conflicts.

You will notify Mr. C. M. Furman, of Greenville, South Carolina, and H. R. Garden, counselor at law, room 608, Mutual Life Building, Nassau, Cedar, and Liberty streets, New York City, New York, and all parties whose interests are involved in this controversy, of this ruling; and at the proper time report to this office the action had pursuant to your notice.

Respectfully,

LEWIS A. GROFF,
Commissioner.

WASHINGTON, D. C., *September 30, 1890.*

To the SECRETARY OF THE INTERIOR.

SIR: In the matter of the appeal now pending before you from the decision of the Commissioner of the General Land Office dated August 2, 1890 (notice of which appeal was filed with you August 14, 1890), throwing open to public entry certain lands in Florida known as "Anastasia Island," which have been in the possession and occupancy of our clients, the heirs of Jesse Fish, jr., and his ancestors for fully one hundred years, we desire to submit that the Commissioner erred in this:

1st. That he failed to sustain the register of the land office at Gainesville, Florida, in rejecting applications to enter said lands because the same were the property of the heirs of Jesse Fish.

2nd. In deciding that the Spanish grant to Jesse Fish required any act on the part of his heirs or of the Government for its confirmation.

595 3rd. In deciding that the heirs of Jesse Fish should have relinquished the excess over and above one league square.

4th. In holding, contrary to the decisions of the Supreme Court, that

any condition was required upon which the treaty obligation should be complied with.

First. As a matter of fact, this attempt upon the part of the United States to take possession and dispose of the lands is purely and simply an act of spoliation.

The lands belong to the heirs of Jesse Fish.

Are secured to them by treaty.

Have been in their possession since the purchase and cession of East and West Florida.

They have paid taxes upon them for each and every single year since the United States acquired jurisdiction.

Their title has never been questioned; nor could it be.

It was reported upon by the commissioner appointed for that purpose by Congress, under the terms of the treaty with Spain, as a complete, perfect, and valid grant in 1825.

Congress failed to carry out the treaty obligations and confirm the report, and this is now made a pretext by the Land Office for confiscating the lands in the name of the United States, notwithstanding the fact that they have remained in the possession and occupancy of the grantees from the date of the treaty and for fifty years before.

The heirship of the parties whom we represent to Jesse Fish is not disputed; nor need it enter into the question as to whether these are or are not public lands.

We have furnished in a memorial to Congress—where the question is now pending on a petition for the confirmation of the report of the commissioners made in 1825—ample proof upon these points, and stand prepared to furnish to you all necessary evidence thereon.

596 Such proof, however, has already been filed in the General Land Office in reply to a communication from the Commissioner of the General Land Office to the surveyor-general of the district of Florida, dated March 28, 1887.

It seems to be suggested in the opinion of the Commissioner that redress may be had by our clients in and through the courts.

Our answer to that is, that you have no right to compel us to defend our own or to commence litigation as against the acts of the United States which under the treaty is our guarantor.

The reasoning of the Commissioner and his reference to a reported case, we respectfully submit, does not touch us in our rights. That is a case where the title to certain lands in California under a Mexican grant had not been submitted to, much less confirmed by the board of land commissioners appointed under the act of March 3, 1851. It is claimed by the Commissioner that our client never released the excess.

This is true nor do *do* they now, nor had Congress, at any time, the right to confiscate any part of their property or demand of them any condition upon which the treaty obligation should be complied with.

Second. The United States has not now and never had one scintilla of title to the lands which it now assumes to give away, and in demanding that we defend our rights in the courts as against this attempted spoliation it imposes upon us an iniquitous burden.

The Supreme Court of the United States, in the case of the U. S. vs. Percheman (7 Peters, 51), has expressely decided that, under the terms

of the Spanish treaty, this grant stood absolutely confirmed, ratified, and acknowledged by the United States simultaneously with the ratification of the treaty.

Our case is fully set forth in a printed brief prepared for presentation to the Attorney-General, which is herewith submitted, and to which your attention is earnestly invited.

597 We own this land by grant, descent, purchase, and one hundred years of occupancy.

It is secured to us by treaty, and no one questions our right except the United States, one of the parties to that treaty, and, as we have observed above, the sole and solemn guarantor of our rights in the premises and of our peaceable possession.

If other parties should molest us in our possession, it would be proper for us to appeal to the courts of the United States for protection; but we respectfully submit that it is the duty of the Land Office not only to refrain from laying title to these lands, but to assist our clients in obtaining any action that may be required to perfect and maintain their rights.

Third. It is further submitted that the question is and has been pending and awaiting action before Congress, and that the decision of the Commissioner of the Land Office is untimely and must certainly result in embarrassment not merely to us, but to any parties who may, through that decision, become innocent trespassers upon our property.

Your attention is invited to the recent debate in the Senate upon the bill providing for the establishment of a land court, especially to the language of Senators Edmunds, Ransom, and Pasco, the first of whom is chairman of the subcommittee of the Committee on Private Claims, who has before him the question of the confirmation of the report of the commission of 1825.

We would be pleased, if any doubt remains in your mind as to our rights to have the decision of the Land Office reversed, to have an oral hearing at any time that you will be pleased to appoint.

Very respectfully,

HUGH R. GARDEN,
M. T. MCMAHON, New York, and
FREEMAN & MONEY,
Attorneys for the heirs of Jesse Fish.

598 J. I. H. F. L. C. E. F. B.

DEPARTMENT OF THE INTERIOR,
Washington, June 22, 1893.

Vol. 15–327.

In re claim of Jesse Fish, involving title to Anastasia Island, Florida.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: On July 16, 1870, Mr. Charles M. Furman addressed a communication to the Commissioner of the General Land Office, claiming to be the owner of Anastasia Island, in Florida, under a title derived from a Spanish grant, made prior to 1763 to Jesse Fish, and that the said grantee and his heirs have had continuous possession of said property from the date of the grant to the present time.

On August 2, 1890, you rendered a decision upon the claim of the heirs of Jesse Fish to said property, holding that the claimants having failed to comply with the acts of Congress providing for the confirmation of such grants, it has never been confirmed and has no validity before the Land Department.

From this decision the heirs of Jesse Fish have filed an appeal.

The appellants, as heirs of Jesse Fish, claim title to the whole of Anastasia Island, containing about 10,000 acres, under a grant from the Spanish Government made prior to 1763. They further claim that said grant, being a complete, perfect, and valid grant at the date of the treaty of February 22, 1819, between the United States and Spain, and having been so reported on December 31, 1825, by the commissioners appointed under the act to ascertain and determine titles to lands in Florida under said grant, said land was never the property of the United States,
599 and the complete title to the same is vested in the heirs of said Fish.

The act of May 8, 1822 (3 Stat., 709), provided for the appointment of commissioners to inquire into the justice and validity of all claims or titles to land in the Territory of Florida under any patent, grant, concession, or order of survey made prior to the 24th day of January, 1818, which were valid under the Spanish Government or by the law of nations, and which had not been rejected by the treaty ceding the territory of east and west Florida to the United States. The act required all persons claiming title under such grant or orders of survey to file their claims with said commissioners, setting forth the situation and boundaries, if to be ascertained, with the deraignment of titles where they were not grantees or original claimants, and empowered the commissioners to examine into such claims, and if satisfied that said claims are correct to give confirmation to them, provided that the confirmation should only operate as a release of any interest of the United States, and that said commissioners shall not have power to confirm any claim or part thereof where the amount claimed is undefined in quantity or shall exceed 1,000 acres; but in all such cases they shall report the testimony, with their opinions, to the Secretary of the Treasury, to be laid before Congress for its determination.

This act was amended by act of March 3, 1823 (3 Stat., 754), providing that the powers of the commissioners appointed under the act of May 8, 1822, shall be confined exclusively to the examination of claims in west Florida, and authorizing the appointment of three commissioners to examine titles and claims to lands in east Florida under such grants and orders of survey. The 2d section of this act provided:

That in the examination of titles to land before either of said boards of commissioners the claimant or claimants shall not be required to produce in evidence the deraignment of title from the original grantee or patentee, but the commissioners shall confirm every claim in favor if actual settlers at the time of session [cession] of the said territory
600 to the United States, where the quantity claimed does not exceed three thousand five hundred acres, where such deraignment can not be obtained, the validity of which has been recognized by the Spanish Government, and where the claimant or claimants shall produce satisfactory evidence of his, her, or their right to the land claimed; and

said commissioners shall have power, any law to the contrary notwithstanding, of deciding on the validity of all claims derived from the Spanish Government in favor of actual settlers where the quantity claimed does not exceed three thousand five hundred acres.

On December 31, 1825, the commissioners reported this claim to the Secretary of the Treasury, together with other claims that had been acted upon by said commissioners, among which were the following: Report No. 1, of claims not exceeding 3,500 acres which had been confirmed by the commissioners; report No. 2, of claims not exceeding 3,500 acres which had not been confirmed, but which were recommended for confirmation; and report No. 3, being "Register of claims to land exceeding 3,500 acres, in east Florida, which are founded on patents or royal titles derived from the Spanish Government and which, in the opinion of the commissioners, are valid."

In "report No. 3" appears the claim of the heirs of Jesse Fish, which was reported by the commissioners as a claim derived from a concession or order of survey, filed June 19, 1795, to Jesse Fish, for 10,000 acres of land situated on Anastasia Island. These claims were reported to Congress February 21, 1826. (Am. State Papers, vol. 4, p. 283.)

By act of February 8, 1827 (4 Stat., 202), all decisions made by the commissioners appointed to ascertain claims and titles to lands in the district of east Florida and those recommended for confirmation, under the quantity of 3,500 acres, contained in the report of the commissioners submitted to Congress by the Secretary of the Treasury on February 21, 1826, were confirmed.

601 By act of May 23, 1828 (Stat., 284), it was enacted that the claims contained in the report of the commissioners of east Florida and recommended for confirmation by said commissioners shall be confirmed to the extent of the quantity contained in one square league, to be located within the limits of the original grant, and by section 2 it was enacted:

That no more than the quantity of acres contained in a league square shall be confirmed within the bounds of any one grant, and no confirmation shall be effectual until all the parties in interest, under the original grant, shall file with the register and receiver of the district where the grant may be situated a full and final release of all claim to the residue contained in the grant.

The claim of Fish, being for a quantity greater than one square league, was controlled by the provisions of this act and was only confirmed subject to the conditions therein named.

The heirs of Fish have never taken any action under said act and, in the meantime, two other private land claims based upon Spanish grants, to wit, the claims of Rodrigues and Sanchez, have been located on said island and segregated from the public domain by the United States survey made in 1835, against which no protest was made by the heirs of Fish nor, indeed, does it appear that any notice was taken of said claim from the time that it was presented to the commissioners until July 16, 1870.

It is insisted by appellants that their title to Anastasia Island is under a complete Spanish grant, which was so considered by the Spanish authorities and the United States commissioners, who reported it to be valid

for the full quantity granted. That the United States never having acquired any title to the land covered by said grant under the treaty with Spain it could not impose any condition upon the grantees, and no act was therefore required on the part of the heirs of Fish or of the Government to perfect their title.

602 The theory of their claim is that the act of Congress of May 23, 1828, which undertook to confirm all claims of this nature to the extent of a league square, provided the parties in interest released all lands in the grant in excess of a league square, is in violation of the obligation of the Government as established by the treaty and can not therefore affect the validity of their claim.

Even conceding that this claim was a valid grant from the Spanish Government for the full quantity of 10,000 acres or the entire area of Anastasia Island, and that the act of May 23, 1828, is in violation of the obligation of the treaty under which Florida was ceded to the United States, the Departments as well as the courts are bound to follow the statutory enactments of its own Government and must be controlled thereby.

This question was fully considered by the Supreme Court in the case of Botiller *vs.* Dominguez (130 U. S., 238), in which the court held that no title to land in California, dependent upon Spanish or Mexican grants, can be of any validity which has not been submitted to and confirmed by the board provided for that purpose under the act of March 3, 1851 (9 Stat., 631), or, if rejected by that board, confirmed by the district or Supreme Court of the United States.

In that case, as in this, it was claimed that the grant was a complete grant, needing no confirmation, and that the grantee was not compelled to submit the same for confirmation to the board of commissioners. The material and controlling question decided by the court in that case and which must control in this, is that if an act of Congress is in conflict with the treaty the court is bound to follow the statutory enactment of its own Government. "If the treaty was violated by this general statute enacted for the purpose of ascertaining the validity of claims derived from the Mexican Government, it was a matter of international concern which the two States must determine by treaty or by such other means as enables one State to enforce upon another the obligations

603 of a treaty. This court, in a class of cases like the present, has no power to set itself up as the instrumentality for enforcing the provisions of a treaty with a foreign nation which the Government of the United States, as a sovereign power, chooses to disregard." (Botiller *vs.* Dominguez, supra.)

This language must apply with greater force to the action of the Department, whose duty it is to administer the laws as they are found in the statute books, and not to determine whether they are in violation of the Constitution or of treaties with foreign nations.

If this claim comes within the provisions of the acts of February 28, 1827, and of May 23, 1828, its validity can not be recognized, for the reason that the claimants have failed to comply with the conditions prescribed by the said acts. The purpose of the several acts providing for the adjudication of these claims was to separate private property from the public domain, to enable Congress to safely sell the vacant lands in

the newly acquired territory, and "to accomplish this it was necessary that all claims of every description should be brought before the commissioners, and that their powers of inquiry should extend to all." United States vs. Arredondo et al., 6 Peters, 691; United States vs. Percheman, 7 Peters, 51; United States vs. Clark, 48 Peters, 436–465.

All claims of every description whatever, whether arising under patents, grants, concessions, or orders of survey, were required to be submitted to the board of commissioners for confirmation, or to be submitted to Congress for final action, before their validity could be recognized, and all claims reported upon by the commissioners, whether founded upon complete or incomplete title, were subject to the provisions of the act of Congress of May 23, 1828, limiting the extent of which confirmation would be made, and providing that all claims to lands within the Territory of Florida embraced in the treaty between Spain and the United States which had not been decided and finally settled should be brought by petition before the court within one year from the date of said
604 act or be thereafter forever barred.

In the case of the United States vs. Percheman, supra, the claim involved was a complete grant subject to no condition. It was reported to Congress January 14, 1830, in a list with other claims rejected for want of sufficient evidence of title. The act of May 26, 1830, confirmed all claims which had been recommended for confirmation by the commissioners, but took no action upon the list of rejected claims. A petition was filed by claimant in the supreme court for the district of East Florida, under the 6th section of the act of May 23, 1828. The court, after reviewing the several acts for the investigation and adjudication of these claims, says that "these commissioners seem to have been appointed for the special purpose of producing promptly for Congress that information which was required for the immediate operation of the land office." The court further says:

It is apparent that no claim was finally acted upon until it had been acted upon by Congress; and it is equally apparent that the action of Congress on the report containing this claim is confirmed to the confirmation of those titles which were recommended for confirmation. Congress has not passed on those which were rejected. They were, of consequence, expressly submitted to the court.

The grant to Percheman was a complete grant, subject to no condition, and although it had been rejected by the board of commissioners it was as much protected until acted upon by Congress as the Fish claim, which had been reported favorably.

The commissioners had no jurisdiction to confirm grants for more than 1,000 acres, but merely to examine into and report to Congress such claims as are valid and ought to be confirmed. "No claim was finally acted upon until it had been acted upon by Congress."

In the case of United States vs. Clark, supra, the court said:
605 The grant which constitutes the foundation of the petitioner's claim is a complete title, subject to no condition whatever, emanating from the governor of East Florida, who was the lawful authority of His Catholic Majesty, for making grants and concessions of land in that province. The decree of the district court, so far as it affirms the validity of this grant, is, we think, correct. But it appears to us to confirm the title of the petitioner to lands not comprehended within it.

If these were perfect grants, instrinsically valid and not depending upon the sanction of the legislative or judicial department, it would have been unnecessary to file a petition to obtain the decree of confirmation, but for the provision of the act of May 23, 1828, which required all claims not finally acted upon by Congress to be brought before the court for adjudication.

It is apparent that when the court says, in the case of United States vs. Wiggens (14 Peters, 334), that perfect titles made by Spain prior to January 24, 1818, are intrinsically valid, and need no sanction from the legislative or judicial department of the Government, it simply means that perfect claims do not derive their validity from confirmation, but there is nothing to indicate that it was not the intention of Congress to require all claims to be submitted to the proper tribunal appointed to ascertain what claims are perfect, and that claims not submitted in accordance with the acts would not be recognized. If this claim came within the provisions of the second section of the act of May 23, 1828, its validity was recognized only to the extent of one league square, and upon the condition that the claimant would relinquish all in excess of that quantity on or before May 26, 1831. If it did not come within the provision of said section, then it was a claim not acted upon by Congress, and is barred by the failure to commence the proper proceedings in the courts within the time limited by the 6th section of said act of May 23, 1828.

606 From the facts shown by this record I can see no reason for the recognition of this claim, which seems to have been practically abandoned from 1825 to 1870 by failure to perform any act required under the laws of Congress, and without protest against the action of your office in extending the public surveys over the island and restoring to the public domain all of said lands, except that part segregated and set apart as the private claims of Rodriguez and Sanchez, and in patenting to the State a large part of this land as swamp and overflowed.

In view of the foregoing, the decision of your office holding that said claim has no validity is affirmed and the papers are herewith returned.

With the record in this case your predecessor forwarded the application of various parties to enter lands on said island under the land laws of the United States, and in his decision he directed that if the decision rejecting the Fish claim be affirmed, the applications will be returned to the local officers to act upon the same according to their merits and to settle all conflicts.

On February 14, 1891, my predecessor directed that action upon the applications referred to should be suspended until the end of the then existing session of Congress in view of the following resolution, which had been introduced in the Senate on February 12, 1891:

"Resolved, That the Secretary of the Interior be, and he hereby is, requested to suspend all further action in respect to admitting land claims under the laws of the United States on the island of Anastasia, Florida, during the present session of Congress and until the expiration of the next session of Congress unless Congressional action on the subject shall have been taken meantime."

On February 13, 1890, Senator Pasco requested that this resolution should go over without prejudice, stating that the probability is
607 that it will not be further pressed, and such action was taken. It does not appear from the proceedings in the Senate that any further

action was taken upon this resolution, and it being no longer necessary to suspend action upon the applications filed in your office to make entry of these lands, as directed by said letter of February 14, 1891, the directions contained therein are hereby revoked, and you will take such action upon said applications as may be right and proper.

Very respectfully, HOKE SMITH, *Secretary.*

(Endorsed:) Defendant's Exhibit 12. Filed in evidence January 19, 1897. Decision of Secretary Interior in Fish claim.

608 SOR. GOBERNADOR: Dⁿ Gabriel Guillermo Pespall, de este vecindario y comercio y administrador de los bienes del difunto Don Jessie Fish, con el debido respeto á U. S., dice: Que en el año de 1791 mercedó el Gobierno al expresado Fish un terreno situado en Matanzas, cuya certificacion ha padecido estravio; por tanto á U. S. suplica se sirva mandar que por la Secretaria de Gobierno se le ponga á continuacion copia certificada del memorial que presentó aquel y decreto que debe existir original en dcha. oficina para ha dotodo damo que mas convenga en favor de los mencionados bienes. Gracia que espera alcanzar á la justificacion de U. S.

San Agustin de la Florida, 7 de febrero de 1818.

GABL. G. PESPALL.

S. AGUSTIN, *9 de febrero de 1818.*

Como lo pide:

COPPINGER.

Mem.

SEÑOR GOBERNADOR: Dⁿ José Fish, natural de esta ciudad y recibido vasallo de S. M., con el mayor respeto á U. S. expone que es dueño de ocho piezas de esclavas actualmente aqui, y cinco que espera de
609 Providencia, y deseando el suplicante emplearse con ellos en la agricultura, ocurre á la piedad de U. S., rogandole se sirva concederle la cantidad de acres á que corresponde á su persona y las citadas ocho piezas de esclavos en la plantacion que baxo el dominio Britanico perteneció á un tal Tod, y se halla cinco millas al sur del parage que posee Francisco Pallicer mas arriba del Castillo de Matanzas. Gracia que espera alcanzar de la recta justificacion de U. S.

San Agustin de la Florida, 1° de abril de 1791.

JOSÉ FISH.

Decreto.

SAN AGUSTIN DE LA FLORIDA, *1° de abril de 1791.*

Permitese á esta parte que por ahora se establezca en el parage que solicita, hasta que provista la plaza de agrimensor publico, se le mida el numero de acres de tierra que le corresponda á su familia y se le dé propiedad de ellos como á todos los demás vasallos de S. M.

QUESADA.

Dⁿ Tomas de Aguilar, subteniente de infanteria y secretario de este Gobierno por S. M., certifico que la anterior copia esta fielmente
610 sacada del original que existe en esta secretaria de mi cargo á que me someto; y en cumplimiento de lo mandado doy la presente en San Agustin de la Florida, á diez de febrero de mil ochocientos diez y ocho.

TOMAS DE AQUILAR.

(Endorsed:) N. 98. G. W. Perpall for Jesse Fish, heirs of. Feb. 9/1818.

U. S. SURVEYOR-GENERAL'S OFFICE,
Tallahassee, Florida.

I, W. H. Milton, jr., do hereby certify that I am the United States surveyor-general for the surveying district of Florida; that the maps and records of surveys relating to the United States lands and Spanish grants of land in the State of Florida and the Spanish archives relating to lands in east Florida and the proceedings before the commissioners for the ascertaining of titles to lands in east Florida are recorded or left among the records in my official custody.

That I have compared the foregoing document with the original in my custody and do hereby certify that the same is a true copy and literal transcript of the original document in the Spanish language found among the archives and documents belonging to the records and files in the office of the U. S. surveyor-general of Florida in my custody.

Witness my hand and private seal, having no official, this 25th day of Sept., A. D. 1896.

W. H. MILTON, Jr., [SEAL.]
U. S. Surveyor-General of Florida.

(Endorsed:) Defts. Ex. 16. Furman vs. Mitchel. Filed in evidence Jany. 19, 1897. H. H. Buckman, master. Ex. 16 constitutes 1st 6 sheets. Refiled this March 3/97, with Vandum translation attached. H. H. Buckman, master.

611 [Translation.]

Senor GOVERNOR: Don Jesse Fish, a native of this city, & received as a subject of His Catholic Majesty with the greatest respect, states to yr. excy. that he is owner of eight head of slaves, three actually here & five that he expects from Providence, & the petitioner desiring to employ them in agriculture, appeals to the goodness of y. e. & requests you will be pleased to grant him the quantity of acres which correspond to himself & the said eight head of slaves at a plantation, which, under the British Government belonged to one Todd, & is about five miles south of the place possessed by Francisco Pellecer above the fort of Matanzas, a favor which he hopes from the justice of yr. excelly.

St. Augustine, Florida, 1st April, 1791.

JESSE FISH,
ST. AUGUSTINE, FLORIDA, *1st of April, 1791.*

Let this party be permitted to establish himself on the place he solicits until the place of public surveyor being filled the quantity of acres corresponding to him & his family be surveyed & he shall receive a title of property for them in the same manner *is* other subjects of His Majesty.

QUESADA.

A certificate was given.

I certify the foregoing to be a true and correct translation from a document in the Spanish language on file in the office of the public archieves of St. Augustine.

F. J. FATIO, *S. B. L. C.*

(Endorsed:) Mem. & Con. English. Translation.

612 U. S. SURVEYOR-GENERAL'S OFFICE,
Tallahassee, Florida.

I, W. H. Milton, jr., do hereby certify that I am the United States surveyor-general for the surveying district of Florida; that the maps and records of surveys relating to the United States lands and Spanish grants of land in the State of Florida, and the Spanish archives relating to lands in east Florida, and the proceedings before the commissioners for the ascertaining of titles to lands in east Florida, are recorded or left among the records in my official custody; that I have compared the foregoing document with the original thereof in my custody and do hereby certify that the same is a true copy and literal transcript of the original document found among the archives belonging to the records and file in the office of the U. S. surveyor-general of Florida in my custody.

Witness my hand and private seal, having no official seal, this 26th day of September, A. D. 1896.

[SEAL.] W. H. MILTON, Jr.,
U. S. Surveyor-General of Florida.

613 To the honorable the commissioner appointed to ascertain claims and titles to land in East Florida.

To memorial of the heirs of Jesse Fish respectfully showeth that your memorialists claim title to a tract or parcel of land containing five hundred acres, situated at the head of Matanzas River, at a place known during the time the British held this province by the name of Todds Fields, which tract of land was granted by the Spanish Government to the deceased, Dn. Jesse Fish, on the 1st April, 1791, for head rights, as will more fully appear by a memorial & decree herewith exhibited and marked "A."

614 And your memorialists further show that the said tract of land has continued in the possession and has been cultivated by the deceased Jesse Fish and his heirs since the 1st day of April, 1791, to the present day.

Your memorialists further show that they are at present a resident of the Territory of Florida, &c.

G. W. PERPALL,
For the Heirs of Jesse Fish.

(Endorsed:) Memorial. Heirs of Jesse Fish for 500 acres.

U. S. SURVEYOR-GENERAL'S OFFICE,
Tallahassee, Florida.

I, W. H. Milton, jr., do hereby certify that I am the United States surveyor-general for the surveying district of Florida; that the maps and records of surveys relating to the United States lands and Spanish grants of land in the United States of Florida and the Spanish archives relating to land in East Florida and the proceedings before the commissioners for the ascertaining of titles to lands in East Florida are recorded or left among the records in my official custody; that I have compared the foregoing document with the original thereof in my custody, and do hereby certify that the same is a true copy and literal transcript of the

original document found among the archives and documents belonging to the records and filed in the office of the U. S. surveyor-general of Florida in my custody.

Witness my hand and private seal, having no official seal, this 25th day of September, A. D. 1896.

W. H. MILTON. [SEAL.]
U. S. Surveyor-General of Florida.

615 St. Agustin, 28 de Marzo de 1818.

Declarase á favor de los herederos del difunto Dⁿ José Fish los ochocientos sesenta acres de tierra á que es concedida la presente solicitud, sin perjuicio de tercero y en su virtud permitese al agrimensor general interrino de la provincia que proceda á la medicion y deslinde de ellas, y para constancia archivese este expediente en la secretª de Gobierno dandose al interesado copia certificada
616 de el en la forma de estilo.

COPPINGER.

Sor. Gobernador: Dⁿ Gabriel Guillermo Pespall, de este vecindario y comercio y administrador de los bienes del difunto Dⁿ José Fish, con el mas sincero respeto á US. expone: Que habiendo el expresado Dⁿ José Fish solicitado de este Gobierno se le mercedas en la cantidad de acres que correspondian á su persona y ocho esclavos de su pertenencia en la plantacion que bajo el dominio británico perteneció á un tal Tod, situado al sur del parage que posehe Dⁿ Franᶜᵒ Pellicer mas arriba del castillo de Matanzas, se le permitió por decreto de 1° de Abril de 1791, el establecimiento y cultivo de dicho terreno hasta que provista la plaza de agrimensor publico se le aprecien las cantidades de acres que le correspondian y se le diese propiedad de ellos como á todos los demás vasallos de S. M. segun un constado del documento que respetuosamente acompaña, en virtud de lo qual tomo posecion de el y ha sido cultivado sin interrupcion hasta la fecha.

Por tanto á US. rendidamente suplica se sirva declarar á favor de los herederos del referido Fish el derecho á quinientos acres de tierra en el relacionado parage, cuyo numero es el que le correspondia con arreglo al reglamento que en aquella epoca regia para el repartimiento de tierras; y trescientos setenta acres mas que pertenecen con arreglo al que actualmente rige á los esclavos que contiene la adjunta noticia, adquiridos despues y ha empleado en la labor del terreno que solicita, permitiendo al mismo tiempo que Dⁿ Jorge Marke, agrimensor yntᵒ de la provincia, pase á medirlas y deslindarlas para en su consequencia obtener el correspondiente titulo previa la debida satisfaccion de haber cumplido con las condiciones que en general tiene estipuladas el Gobierno para el efecto; gracia que no dudo alcanzar de la justificacion de US.

San Agustin de la Florida, 28 de Marzo de 1818.

GABRIEL G. PESPALL.

617 Noticia de los esclavos que adquirido Dn. José Fish despues del año de 1791, los quales aun permanecen, con espresion de nombres, sexos, edades y acres de tierra que corresponden con arreglo al reglamento que en la actualidad rige para el apeo de tierras, á saber:

Nombres.	Edades.	Acres.
Clarisa	35	
Sophia	22	
Susana	21	
Juan	20	
Ysabel	19	
Maria	18	
Harrieta	17	
Fabiana	16	
Adam y la muger de este	40 40	
March y su muger, ambos de a	28	
Tomás	20	
Tres muchachos de	8 á 12	
Total acres		50

San Agustin de la Florida, 28 de Marzo de 1818.

GABRIEL G. PESPALL.

(Endorsed:) N 99, Jesse Fish, by G. G. Pespall, March 28, 1818.

618 U. S. SURVEYOR-GENERAL'S OFFICE,
Tallahassee, Florida.

I, W. H. Milton, jr., do hereby certify that I am the United States surveyor-general for the surviving district of Florida; that the maps and records of surveys relating to the United States lands and Spanish grants of land in the State of Florida, and the Spanish archives relating to lands in East Florida, and the proceedings before the commissioners for the ascertaining of titles to lands in East Florida are recorded or left among the records in my official custody.

That I have compared the foregoing document with the original in my custody and do hereby certify that the same is a true copy and literal transcript of the original document in the Spanish language found among the archives and documents belonging to the records and files in the office of the U. S. surveyor-general of Florida in my custody.

Witness my hand and private seal, having no official seal, this day of Sept., A. D. 1896.

W. H. MILTON, JR., [SEAL.]
U. S. Surveyor-General of Florida.

619 Sn. Agustin de la Florida, 1° de abril de 1791.

Permitase á esta parte que por ahora se establezca en el parage que solizita hasta que provista la plaza de agrimensor publico se le mida el numero de acres de tierra que corresponde á su familia y se le dé propiedad de ellos como á todos los demás vasallos de S. M.

QUESADA.

Se dió certificacion.

Señor Gobernador: Dn. Jesse Fish, natural de esta ciudad y recibido vasallo de S. M., con el mayor respeto á U. S., expone que es dueño de ocho piezas de esclavas á tres actualmente aquí y cinco que espera de Providencia, y deseando el suplicante emplearse con ellas en la agricultura, ocurre á la piedad de U. S., rogandole se sirva concederle la cantidad de acres que corresponde á su persona y las citadas ocho piezas esclavas en la plantacion que baxo el dominio Britanico perteneció á un tal Tod, y se halla cinco millas al sur del parage que posee Francisco Pallicier mas arriba del castillo de Matanzas. Gracia que espera alcanzar de la recta justificacion de U. S.

San Augustine de la Florida, 1° de abril de 1791.

JESSE FISH.

(Endorsed:) Dr. Jose Fish. No. 1. Jesse Fish. April 1, 1791.

Deft.'s Ex. 13. Furman v. Mitchell. Filed in evidence Ja'y 19, 1897. H. H. Buckman, master. 13—next 2 sheet' refiled, with translation by Vandun, M'ch 3, '97. H. H. Buckman, master.

620 I, W. H. Milton, jr., do hereby certify that I am the United States surveyor-general for the surveying district of Florida; that the maps and records of surveys relating to the United States lands and Spanish grants of land in the State of Florida and Spanish archives relating to lands in East Florida and the proceedings before the commissioner for the ascertaining of title to lands in East Florida are recorded or left among the records of my official custody.

That I have compared the foregoing document with the original in my custody, and do hereby certify that the same is a true copy and literal transcript of the original document in the Spanish language found among the archives and documents belonging to the records and files in the office of the U. S. surveyor-general of Florida, in my custody.

Witness my hand and private seal, having no official seal, this 25th day of Sept., A. D. 1896.

W. H. MILTON, Jr., [SEAL.]
U. S. Surveyor-General of Florida.

621 [Translation.]

Governor: Gabriel Guillermo Perpall, of this city and commerce, and administrator of the estate of Mr. Jesse Fish, deceased, with all due respect to your excellency, states: That in the year 1791 the Government granted to Mr. Fish a tract of land, situated at Matanzas, the certificate of which has been lost or mislaid.

Wherefore, to your excellency he prays you may be pleased to order that a certified copy be inserted and annexed to this document of the petition presented by said Mr. Fish and the decree of the Government, which, in its original form, must exist among the records of the office of the secretary, in order that petition' may use same for the benefit of the heirs of said estate.

A favor which I hope to obtain from the justice of your excellency.

St. Augustine, Florida, Feb. 7th, 1818.

GABRIEL G. PERPALL.

ST. AUGUSTINE, *Feb'y 9th, 1818.*

As petitioned, granted.

COPPINGER.

Translations to defts.' exs. 13, 14, 16 attached. Furman vs. Mitchell. These translations, embracing pages 1 to 9, filed in evidence this M'ch 3, 1897. H. H. Buckman, master.

Petition.

Governor: Jesse Fish, a native of this city, and received as a subject of His Majesty, with the greatest respect to your excellency, states:

That he is the owner of eight head of slaves—three actually here and five that he expects from Providence—and the petitioner, desiring to employ them in agriculture, appeals to the goodness of your excellency, and requests that you may be pleased to grant him the quantity of acres of land which correspond to himself and the said eight head of slaves
622 at a plantation which, under the British dominion, belonged to one Todd, and is about five miles south of the place possessed by Francisco Pellice, above the fort of Matanzas; a favor which he hopes from the justice of your excellency.

St. Augustine, Florida, April 1st, 1791.

JESSE FISH.

"Decree."

ST. AUGUSTINE, FLA., *April 1st, 1791.*

Let this party be permitted to establish himself on the place he solicits until, the place of public surveyor being filled, the quantity of acres corresponding to himself and his family be surveyed, and he shall receive a little of property for them in the same manner as other subjects of His Majesty.

QUESADA.

Tomas de Aguilar, sublieutenant of infantry and secretary of the Government of His Majesty, certify that the foregoing copy is faithfully taken from the original, which is on file among the records of my office, and, as ordered, I give these presents in the city of St. Augustine, Florida, Feb. 10th, 1818.

TOMAS DE AGUILAR.

623 St. Augustine, the 28th of March, 1818.

Let it be declared in favor of the heirs of the deceased, Mr. Jesse Fish, the eight hundred and seventy acres of land to which the present petition has reference to, without prejudice to third party, and in consequence thereof let the acting surveyor-general of the province be permitted to proceed to survey and mark the same, and let this document be recorded and filed in the office of the secretary of the Government, giving to the interested party a certified copy thereof in the usual style.

COPPINGER.

Governor: Gabriel Guillermo Perpall, a resident of this city, and administrator of the estate of Mr. Jesse Fish, deceased, with the most sincere respect to your excellency, states: That, having the said Mr. Fish solicited of this Government the grant of the quantity of acres of land which corresponded to himself and his eight slaves at the plantation which, under the British dominion, belonged to a certain Todd, situated south of the place owned by Francisco Pellice, above the fort of Matanzas, it was permitted to him, by decree of April 1st, 1791, to establish himself upon said land and cultivate the same until the place of public surveyor should be provided for, when that office would proceed to survey and measure the quantity of acres which corresponded to him, and the respective title of property issued to him as to all other subjects of His Majesty, as it all appears by the documents which are annexed to this petition, by virtue of which he took possession of said land, and the same has been cultivated without interruption to the present day.

Therefore to your excellency he most respectfully requests that you may be pleased to declare in favor of the heirs of the said Mr. Fish, deceased, the right to five hundred acres of land in the 'forementioned place, which number is what corresponded to him in accordance with the regulations then in force concerning the division of lands, and three hundred and seventy acres more, which, under the present regulations, belong to the slaves enumerated in the annexed schedule, which he acquired subsequently, and whom he has employed in the
624 cultivation of the land which he solicits, permitting at the same time that Mr. George Clarke, acting surveyor-general of the province, proceed to survey and mark the same, in order that he may obtain the corresponding title of property, having first complied with all the regulations established by the Government to that effect; a favor which he has no doubt your excellency will grant to him.

St. Augustine, Florida, March 28th, 1818.

GABRIEL G. PERPALL, *Adn.*

List of the slaves acquired by Mr. Jesse Fish since and after the year 1791, and who still remain with corresponding names, sexes, and ages

and corresponding number of acres of land to each, according to the regulations which exist at present concerning the division of lands, to wit:

Names.	Ages.	Acres.
Clarissa	35	5
Sophia	22	5
Susana	21	5
Juan	20	5
Isabel	19	5
Maria	18	5
Harrietta	17	5
Fabiana	16	5
Adam and his wife	40	5
	40	5
March and his wife	28	5
Tomas	20	5
Three boys	8 to 12	6
Total of acres		70

625 St. Augustine, Florida, March 28th, 1818.

GABRIEL G. PERPALL, *Adm.*

(Endorsed:) No. 99. Jesse Fish, by G. W. Perpall, March 28th, 1818.

St. Augustine, Fla., April 1st, 1791.

Let this party be permitted at present to establish himself at the place he solicits until the place of public surveyor shall be provided for, when that office shall survey the number of acres which correspond to his family and let the title of property be given to him as to all other subjects of His Majesty.

QUESADA.

Certification was issued.

Governor: Jesse Fish, a native of this city and received as a subject of His Majesty, with the greatest respect to your excellency, states: That he is the owner of eight head of slaves, three of them actually here and five which he expects from Providence. And the petitioner wishing to employ them with himself in the agriculture, appeals to the goodness of your excellency requesting that you may be pleased to grant him the quantity of acres of land which correspond to himself and to his eight slaves, at the plantation, which under the British dominion belonged to a Todd, and which is situated five miles south of the place owned by Francisco Pellice above the fort of Matanzas. A favor which he expects to obtain from the justice of your excellency.

St. Augustine, Florida, April 1st, 1791.

JESSE FISH.

(Endorsed:) Mr. Jesse Fish, Ni. 1. Jesse Fish. April 1st, 1791.

626 ST. AUGUSTINE, FLORIDA, *February 26th, 1897.*

I certify the foregoing to be a true and correct translation from the annexed documents in the Spanish language.

WM. A. VANDRELL,
Translator.

(Endorsed:) Defts. Exhibits 13, 14, 16, with translations. Furman vs. Mitchell. Filed in evidence Jan'y 19th, 1897, refiled with Vandrell translation 3/3/97. H. H. Buchman, master. In re grant to Fish 500 acres at Graham's swamp.

627 FLORIDA. AÑO DE 1819. JESSE FISH.

Dn. Gabriel Perpall, como Administrador de los bienes de Dn. Jesse Fish, solicitando titulo de propiedad de 509 acres de tierra en el Pantano de Graham.

628 *Memorial.*

SOR. GOBERNADOR: Dn. Guillermo Perpall, de este vecindario y comercio y Administrador de los bienes del defunto Dn. Jesse Fish, con el debido respeto á V. S. dice: que en el año de 1791 mercedó el Gobierno al espresado Fish un terreno situado en Matanzas, cuya certificacion ha padecido estravio, por tanto: A V. S. suplica se sirva mandar que por la Secretaria de Gobierno se la ponga á continuacion copia certificada del memorial que presentó aquel y decreto que debe existir original en dha. oficina para hacer de todo el uso que mas convenga en favor de los mencionados bienes. Gracia que espera alcanzar de la justificacion de V. S.

San Agustin de la Florida, siete de Febrero de mil ocho cientos diez y ocho.

GABRIEL G. PERPALL.

Decreto.

San Agustin, nueve de febrero de mil ocho cientos diez y ocho. Como lo pide.

COPPINGER.

629 [Copia.]

SOR. GOBERNADOR: Dn. Jesse Fish, natural de esta ciudad y recibido vasallo de S. M., con el mayor respeto á V. S. espone: que es dueño de ocho piezas de esclavos, tres actualmente aqui y cinco que espera de Providencia, y deseando el suplicante emplearse con ellas en la agricultura, ocurre á la piedad de V. S. rogándole se sirva concederle la cantidad de acres que corresponden á su persona y las citadas ocho piezas de esclavos en la plantacion que baxo del dominio británico perteneció á un tal Tod, y se halla cinco millas al sur del parage que posehe Francisco Pellicer mas arriba del castillo de Matanzas. Gracia que espera alcanzar de la recta justificacion de V. S.

San Agustin de la Florida, primero de Abril de mil sete cientos noventa y uno.

JESSE FISH.

630 *Decreto.*

San Agustin de la Florida, primero de Abril de mil setecientos noventa y uno.

Permítase á esta parte que por ahora se establezca en el parage que solicita hasta que provista la plaza de agrimensor público se le mida el número de acres de tierra que le corresponda á su familia y se le dé propiedad de ellos como á todos los demas vasallos de S. M.

QUESADA.

Certificacion.

Don Tomás de Aguilar, subteniente de ynfanteria y secretario de este Gobierno por S. M., certifico que la anterior copia está fielmente sacada del original que existe en esta secretaría de mi cargo de que me remito; y en cumplimiento de lo mandado doy la presente en San Agustin de la Florida á dies de Febrero de mil ochocientos dies y ocho.

TOMÁS DE AGUILAR.

Memorial.

SOR. GOBERNADOR: Dn. Gabriel Guillermo Perpall, de este vecindario y comercio y administrador de los bienes del difunto Dn. Josse Fish, con el mas sincero respeto á VS. expone: Que habiendo el expresado Dn. Josse Fish solicitado de este Gobierno se le mercedaren la cantidad de acres que correspondian á su persona y ocho esclavos de su perte-
631 nencia en la plantacion que bajo el dominio británico perteneció á un tal Tod, situada al sur del parage que posehe Dn. Francisco Pellicer mas arriba del castillo de Matanzas, se le permitió por decreto de primero de Abril de mil setecientos noventa y uno, el establecimiento y cultivo de dho. terreno hasta que provista la plaza de agrimensor público se le apresien la cantidad de acres que le correspondian, y se le diese propiedad de ellos como á todos los demás vasallos de S. M. segun consta en el documento que respetuosamente acompaña; en virtud de lo cual tomó posecion de el y ha sido cultivado hasta la fha.; por tanto á V. S. vensidamente suplica se sirva declarar á favor de los herederos del referido Fish el derecho á quinientas acres de tierra en el relacionado parage, cuyo número es el que le correspondia con arreglo al reglamento que en aquella época régia para el repartimiento de tierras; y trescientas setenta acres mas que pertenecen con arreglo al que actualmente rige, á los esclavos que contiene la adjunta noticia, adquiridos despues y ha empleado en la labor del terreno que solicita; permitiendo al mismo tiempo que Dⁿ George Clark, agrimensor gral., interino de esta provincia, pase á medirlas y deslindarlas para en su consequencia obtener el corres-
632 pondiente titulo previa la debida calificacion de haber cumplido con las condiciones que en general tiene estipuladas el Gobierno para defecto. Gracia que no duda alcanzar de la justificacion de U. S. San Agustin de la Florida, veinte y ocho de Marzo de mil ochocientos diez y ocho.

GABRIEL G. PERPALL.

Decreto.

San Agustin, veinte y ocho de Marzo de mil ochocientos diez y ocho. Declarase á favor del difunto Dⁿ José Fish los ochocientos setenta acres de tierra á que es contrahida la presente solicitud sin perjuicio de tercero, y en su virtud permitese que el agrimensor general interino de la Provincia proceda á la medición y deslinde de ellos; y para constancia archivese este expediente en la Secretaria de Gobierno, dandose á el interesado copia certificada de el en la forma de estilo.

COPPINGER.

Dⁿ Tomás de Aguilar, subᵗᵉ de ynfanteria y secretario por S. M. del Gobierno de la plaza de San Agustin y Provincia de la Florida ori-
633 ental, certifico: Que la precedente copia está bien y fielmente sacada de su original que existen en el archivo de mi cargo a que me remito, y en cumplimiento de lo mandado en el supʳ decreto que antecede doy la presente al interesado en San Agustin de la Florida á treinta de Marzo de mil ochocientos diez y ocho.

THOMAS AGUILAR.

634 Dn. Roberto McKardy, agrimensor interino nombrado por el Gobierno de esta plaza y provincia, y perito elegido en este caso, certifico: Que tengo medido y deslindado á favor de los herederos de Dn. Jesse Fish, quinientos acres de tierra en el pantano de Graham, situado por la cabeza del rio de Matanzas y parte nombrada Todd's field, que le fueron concedidos por el Gobierno, y se hallan en sus circunstancias conforme al plano siguiente.

San Agustin de la Florida, 24 de abril de 1818.

635 SOR. GOBERNADOR: Dn. Gabriel Guillermo Pespall, de este vecindario y comercio y administrador de los bienes del difunto Dn. José Fish, con el respeto que á U. S. debe, expone que habiendo procedido á verificar la medicion y deslinde de los ochocientes setenta acres de tierra, que por decreto de 28 de marzo último se sirvió U. S. declarar á favor de los herederos del espresado Fish, segun lo justifica por el documento que respetuosamente acompaño, en la plantacion que baxo el dominio britanico perteneció á un tal Todd y se halla como cinco millas al sur del parage que posee Dn. Franco. Pellicer mas arriba del castillo de Matanzas, han resultado vacantes solo quinientos acres, en razon de estar concedidos el demás terreno á Dn. José Mariano Hernandez, como lo certificó este en juicio verbal ante el tribunal; por tanto, á V. S. rendidamente suplico que habiendo por presentado el referido documento, se sirva mandar se le expida titulo de propiedad de dichos quinientos acres de tierra en el parage relacionado, y asi mismo
636 de los trescientos setenta restantes hacen el completo de los ochocientos setenta que les estan mercedados, entre los dos baraderos que se hallan en la costa antes de llegar á Mosquitos y como doce millas al sur distante del castillo de Matanzas, á cuyos titulos los considero acreedores en virtud de que han cumplido, como es publico y notorio, con todas las condiciones que tiene estipuladas el Gobierno para obtener aquel, segun está pronto á calificar si necesario fuere. Gracia que espera merecer de la justificacion de U. S.

San Agustin de la Florida, 1° de junio de 1818.

GABL. G. PESPALL.

SAN AGUSTIN, *10 de noviembre de 1818.*

Esta parte justifica en forma, con testigos que declaren bajo de juramento ante el presente escribano, que el difunto Dn. Jesse Fish ha cumplido con las condiciones prescriptas para hacerse acrehedores sus herederos al titulo de propiedad de los quinientos acres que constan del plano que se acompaña, pues por lo que respecta á los trescientos setenta acres
637 que le faltan al completo, por no haberle alcanzado en el mismo parage, ha ocurrido ya tarde y no ha lugar por estar concedidos

todos los terrenos vacantes al Exmo. Sor. Duque de Alagon. Y luego que se haya verificado dicha informacion con certificacion del citado escribano respectivamente á las condiciones que se refiere, traigase el expediente para proveer en su vista.

COPPINGER.

Ante mi:

JUAN DE ENTRALGO,
Exmo. de Gobierno.

En San Agustin, en el mismo dia, mes y año, notifiqué el decreto que antecede á Dn. Gabriel Pespall; doy fé.

ENTRALGO.

638 En la Ciudad de San Agustin de la Florida, á veinte y tres de Marzo de mil ochocientos diez y nueve, Dⁿ Gabriel Guillermo Pespall, para la justificacion que ha ofrecido y le está mandado dar, presente por testigos á Dⁿ José Mariano Hernandez, natural y vecino de esta ciudad, hacendado en esta provincia, de estado casado, del cual su Señoria por ante mi el Escribano recibió juramento que hizo conforme á dcho., su cuyo cargo prometió decir verdad en lo que supiese de lo que fuere preguntado, y examinado consiguiente al decreto que antecede dijo: que le consta y además es bien sabido por notoriedad, que el difunto Dⁿ Jesse Fish ha cultivado por muchos años y aun se cultiva por los esclavos de sus herederos, el terreno que le concedió este Gobierno en el Pantano de Graham sobre la cabeza del rio de Matanzas, que son los quinientos acres á que se refiere al plano presentado, cuyo terreno corre á cargo de Dⁿ Gabriel Pespall como administrador de los bienes, y como el expo-
639 nente ha pasado por aquel parage con mucha frequencia para ir y volver de su plantage, lo ha visto sembrado, cercado, y habitado en terminos de haberse cumplido con las condiciones prescriptas para hacerse acreedores dichos herederos al titulo de propiedad, pues es muy cierto que con las cosechas que se recogen en dicho terreno se ha mantenido, hace muchos años, la familia de Fish, y responde que todo es la verdad á cargo de su juramento; que es de edad de treinta y un años; no le tocan las grates de la ley y firmó con su Sria., de que doy fé.

COPPINGER.
JOSEPH M. HERNANDEZ.

Ante mi:

JUAN DE ENTRALGO.

En dicho dia, compareció Dⁿ Isaac Wickes, vecino de esta plaza y hacendado en ella, natural de Nueva York, de estado viudo, del cual su Sria. por ante mi el Escribano recibió juramento que hizo conforme á dcho., su cuyo cargo prometió decir verdad de lo que supiese de lo que fuere preguntado y examinado como el anterior, dijo que es cierto y constante que Dⁿ José Fish, ya defunto, y despues sus herederos han culti-
640 vado por mas de diez años las tierras que se le concedieron en el parage conocido por Pantano de Graham, situadas en la Cabeza del rio de Matanzas, cuyo cultivo ha sido sin intermision y en ellas ha habido siempre casa de campo y demás mejoras que se requiren en un establecimiento para dar entero cumplimiento á las condiciones prescriptas por el Gobierno, corriendo al presente el cuidado de las siembras á cargo de Dⁿ Gabriel Pespall, como administrador de los bienes de Fish, y

responde que todo es la verdad á cargo de su juramento; que es de edad de sesenta y cinco años, no le tocan las grates de la ley, y enterado del contenido de esta su declaracion dixo estar comforme y firmó, con su Sria., de que doy fé.

COPPINGER.
ISAAC WILKES.

Ante mi:

JUAN DE ENTRALGO.

Seguidamente compareció Dⁿ Fernando de la Maza Arredondo, el joven natural y vecino de esta plaza, hacendado en ella, de estado casado, del cual su Sria. por ante mi el Escribano recibió juramento, que hizo segun
deho., prometiendo decir verdad en lo que supiese de lo que se
641 le preguntare y siendolo como los anteriores, dixo que ha transitado por el plantage del difunto Dⁿ Jesse Fish, situado en el parage conocido por Graham, el mismo que demarca el plano presentado por Dⁿ Gabriel Pupall y tiene á la vista, en el cual hay fabricas, cercas y jente trabajando como la ha habido por espacio de mas de diez años; que conoce el deponente dicho establecimiento desde que lo poseia el citado difunto, pudiendo asegurar por lo que ha visto en esta dilatada posecion que tanto por Fish, como por sus herederos, se ha cumplido con las condiciones prescriptas por el Gobierno y responde que todo es la verdad á cargo de su juramento; que es de edad treinta y dos años; no le tocan las grates de la ley, y firmó con su Sria. de que doy fé.

COPPINGER.
F. M. ARREDONDO.

Ante mi:

JUAN DE ENTRALGO.

642 Certifico y doy fé: Que las condiciones á que se contrahe el decreto antecedente son primeramente que el mercedado, sus herederos y subcesores deberán, dentro de dos años contados desde la deha. en que se espidieron los titulos, construir en las tierras mercedadas una casa con su chiminea proporcionada á su posible y familia. Segunda, que será de la obligacion del mismo tener la tierra limpia y desmontada para el defecto de la labranza, como igualmente dentro del termino de tres años tener á lo menos cinco cabezas de ganado vacuno para cada cincuenta acres de tierra que no sea suficiente para dar fruto y que siempre que se necesite alguna parte de ella para obras publicas ó fortificaciones, deberá cederse con calidad de ser reintegrada en otro parage de su elección ó bien se le pagará el precio arreglado á tasacion; y finalmente que aunque la donacion y cesion se hace perpetuamente no podrá el recipiente ni los suyos,
enagenar ni traspasar á otro dominio las tierras hasta que haya
643 pasado el termino de diez años de posecion y aun entonces deberá executarse la primera venta con permiso del Gobierno y de otra suerte será nula; cuyas condiciones constan en los titulos que este Gobierno ha expedido á algunos pobladores despues de haber recibido la real orden sobre concesion de tierras y en cumplimiento de lo mandado, signo y firmo la presente en San Agustin de la Florida á veinte y dos de Abril de mil ochocientos diez y nueve.

JUAN DE ENTRALGO,
Echo. de Gobo.

SAN AGUSTIN, *24 de Abril de 1819.*

Vistos: Y en atencion á que los herederos del defunto Dn. Jessie Fish han justificado competentemente que han estado en posecion y cultivo pof mas de diez años en las tierras concedidas por este Gobierno desde el año mil setecientos noventa y uno en el pantano de Graham y que han dado entero cumplimiento á las condiciones prescriptas para las mercedes de igual clase, expidades titulo de absoluta propiedad á favor de
644 dchos. herederos que representa Dn. Gabriel Perpall por la cantidad de quinientos acres que se han medido y deslindado segun el plano agregado al expediente.

COPPINGER.

Ante mi:

JUAN DE ENTRALGO,
Escribo. de Gobo.

En San Agustin, en el mismo dia, mes y año, notifiqué el auto que antecede á Dn. Gabriel Guillermo Perpall; doy fé.

ENTRALGO.

U. S. SURVEYOR-GENERAL'S OFFICE,
Tallahassee, Florida.

I, W. H. Milton, jr., do hereby certify that I am the United States surveyor-general for the surveying district of Florida; that the maps and records of surveys relating to the United States lands and Spanish grants of lands in the State of Florida, and the Spanish archives relating to lands in East Florida and the proceedings before the commissioners for the ascertaining of titles to lands in East Florida are recorded or left among the records in my official custody;

That I have compared the foregoing document from pages 1 to
645 17, both inclusive, with the original thereof in my custody, and do hereby certify that the same is a true copy and literal transcript of the original record thereof in the Spanish language found among the archives and documents belonging to the records and files in the office of the U. S. surveyor-general of Florida in my custody.

Witness my hand and private seal, having no official seal, this 15th day of October, A. D. 1896.

W. H. MILTON, Jr., [SEAL.]
U. S. Surveyor-General of Florida.

(Endorsed:) Defts. Exhibit 15. Furman vs. Mitchel. Filed in evidence this Jan'y 19, 1897. H. H. Buckman, master. Refiled with translation attached this March 3, 1897. H. H. Buckman, master. Proceedings in re Graham swamp grant, 500 & translation.

646 [Translation.]

FLORIDA. YEAR OF 1819. JESSE FISH.

Mr. Gabriel Perpall, as administrator of the estate of Mr. Jesse Fish, soliciting title of property to 500 acres of land on Graham's Marsh.

647 [Translation.]

Memorial.

GOVERNOR: Gabriel Guillermo Perpall, a native of this city, and a merchant and administrator of the estate of Mr. Jesse Fish, deceased, with due respect states to your excellency:

That in the year 1791 the Government granted to the above-mentioned Mr. Fish a tract of land situated in Matanzas, the certificate of which has been mislaid, and for this reason, to your excellency, he requests: That you may be pleased to order through the secretary of the Government that a certified copy be inserted and added to this petition of the memorial presented by said Fish, and of the decree, which in its original form must exist in the office of the said secretary, in order that he may use the same for the benefit of the said estate, a favor which he expects and hopes from the justice of your excellency.

St. Augustine, Florida, the 7th day of February of the 1818.

GABRIEL G. PERPALL.

Decree.

St. Augustine, February the 9", of the year 1818. As requested.

COPPINGER.

[Copy.]

GOVERNOR: Jesse Fish, a native of this city and received as a subject of his Catholic majesty, with the greatest respect states to your excellency that he is owner of eight head of slaves, three actually here and five that he expects from Providence. And the petitioner, desiring to employ them with himself in agriculture, appeals to the goodness of your excellency, and requests that you may be pleased to grant him the quantity of acres which correspond to himself and to the said eight head of slaves, at the plantation which under the British dominion
648 belonged to one Tod, and which is about five miles south of the place possessed by Francisco Pellicer, above the fort of Matanzas, a favor which he hopes from the justice of your excellency.

St. Augustine, Florida, April 1", 1791.

JESSE FISH.

Decree.

ST. AUGUSTINE, FLORIDA, *April 1", 1791.*

Let this party be permitted to establish himself on the place he solicits until, the place of public surveyor being filled, the quantity of acres corresponding to himself and to his family be surveyed, and let a title of

property be issued to him for them, in the same manner as other subjects of His Majesty.

QUESADA.

Certificate.

Don Juan de Aguilar, sublieutenant of infantry, and secretary of this government for His Majesty, hereby certifies that the preceding copy is a true copy taken from the original which is on file at the office of the secretary under my charge, and in compliance with orders I hereby give this presents at St. Augustine, Florida, February 10", 1818.

TOMAS DE AGUILAR.

Memorial.

GOVERNOR: Gabriel Guillermo Perpall, a native of this city, and a merchant and administrator of the estate of Jesse Fish, deceased, with the greatest respect to your excellency, states: That having, the said Mr. Fish, solicited of this government the granting of the quantity of acres which correspond to himself and his eight slaves on the plantation which under the British dominion belonged to one Tod, situated south of the place possessed by Mr. Francisco Pellice, above the fort of Matanzas, it was permitted to him by decree of April the first, 1791, to estab-
649 lish himself and cultivate said land until the appointment of a public surveyor, when the number of acres corresponding to him would be measured and granted to him, and the corresponding title of property issued to him, as to all other subjects of His Majesty; as it appears by the document which he respectfully accompanies: By virtue of which he took possession of said land and has cultivated the same up to the present day.

Therefore he most respectfully requests your excellency that you may be pleased to order and declare in favor of the heir of the deceased, Mr. Fish, the decree of (500) five hundred acres of land in the aforesaid place, which number of acres is what corresponded to him in accordance with the rules and regulations which governed the partition of lands in those days. And also (370) three hundred and seventy acres more, which, according to the rules and regulations in force to-day, belong to the slaves which are enumerated in the annexed note, acquired after, and employed in the cultivation of the land which he solicits, permitting at the same time Mr. George Clark, who is acting temporarily as general surveyor of the province, to proceed to measure and mark the aforesaid land, in order that he may obtain the corresponding title of property, having previously complied with all the stipulations and conditions established by the government for such cases.

Favor that he hopes to receive from the justice of your excellency.

St. Augustine, Florida, the 28th day of March, 1818.

GABRIEL G. PERPALL.

Decree.

ST. AUGUSTINE, FLORIDA, *March 28th, 1818.*

Let it be declared in favor of deceased, Mr. Jesse Fish, the eight hundred and seventy acres of land referred to in the present petition, with-

out prejudice to third party, and to that effect let the acting surveyor-general of the province be permitted to proceed to measure and mark the aforesaid land; and let these presents be kept and recorded
650 in the office of the secretary of this government, and a certified copy thereof be issued to the interested party in the usual form.

COPPINGER.

Don Tomas de Aguilar, sublieutenant of infantry, and secretary for His Majesty in the government of this place of Saint Augustine, Florida, and of the province of Eastern Florida. Do hereby certify that the preceding copy is faithfully and correctly taken from the original, which is on file among the records of my office. And in compliance with the aforesaid decree, I hereby issue the present copy to the interested party, at St. Augustine, Florida, the 30th of March, 1818.

TOMAS AGUILAR.

Don Robert McHardy, acting surveyor-general for the government of this place and province, and expert appointed in this case. Do hereby certify that I have measured and marked, in favor of the heirs of Don Jesse Fish, five hundred acres of land in Graham's pantano marsh, situated at the head of the Matanzas River, on the place known as Todd's Field, which were granted by the government, and which conform and agree with the following plan.

St. Augustine, Florida, April 24th, 1818.

651 GOVERNOR: Don Gabriel Guillermo Perpall, a native of this city and a merchant, administrator of the estate of Mr. Jesse Fish, deceased, with the greatest respect due your excellency, states: That having proceeded to verify the measure and marks of the eight hundred and seventy acres of land, which your excellency (decree of March 28th last) was pleased to declare in favor of the heirs of the aforesaid Mr. Fish, at the plantation which under the British dominion belonged to one Mr. Todd, situated about five miles south of the place owned by Mr. Francisco Pellice, above the Matanzas Fort, as it appears by the document hereto annexed, there have resulted only five hundred acres, on account of the balance of the land having been granted to Mr. Jose Mariano Hernandez, as it was proven by him in the verbal judicial proceedings before the court.

Therefore to your excellency he most respectfully requests, that having presented the document aforesaid, you may be pleased to order that the corresponding title of property be issued to him of the said five hundred acres of land in the aforesaid place. And at the same time title also to the three hundred and seventy acres, the remainder of the total grant of eight hundred and seventy acres, in the land situated between the two mud banks which lie on the coast before reaching Mosquitos, and about twelve miles south of Matanzas Fort. To which titles he considers the said heirs entitled to, because they have strictly complied with all the conditions stipulated by the government and necessary to obtain the same, which is publicly and notoriously known, and which he is ready to verify if necessary. A favor which he hopes to receive from the justice of your excellency.

St. Augustine, Florida, June 1st, 1818.

GABRIEL G. PERPALL.

ST. AUGUSTINE, FLORIDA, *Nov. 10th, 1881.*

652 Let the petitioner verify and justify in due form, by the declaration of competent witnesses, who, under oath and before the acting notary public, will declare that the deceased, Mr. Jesse Fish, has complied with all the prescribed conditions necessary to enable his heirs to be entitled to the title of property of the five hundred acres which are mentioned and appear on the plan annexed to the petitioner. And in regard to the three hundred and seventy acres, the remainder of the grant which he would not obtain in the same place, he has applied too late, as all the vacant lands have been already granted to his excellency the Duke of Alajon. And upon verification of the information, duly certified to by the said notary public, let the entire proceedings be brought before me, in order that the proper decree may be entered.

COPPINGER.

Before me.

JUAN DE EUTRALJO,
Notary of the Gov.

At St. Augustine, on the same day, month, and year, I notified the foregoing decree to Mr. Gabriel Perpall, of which I give faith.

EUTRALGO.

In the city of St. Augustine, Florida, on the 23d day of March, 1819, before me appeared Mr. Gabriel Guillermo Perpall, who said that for the justification which is demanded of him, and which he has offered, he presents as a witness Mr. Jose Mariano Hernandez, a native and a resident of this city, married, who having been duly sworn by me according to law, offered to say the truth to the best of his knowledge in answer to all questions which might be propounded to him.

And, having been questioned in regard to the points contained in the preceding decree, said he knows of his personal knowledge, besides being of public notoriety, that the deceased, Mr. Jesse Fish has cultivated for many years the land' which were granted to him by the Government in Graham's Marsh, above the head of the Matanzas River, and which are the same five hundred acres that appear and are made reference to
653 in the map presented, and which lands are now cultivated by the slaves belonging to the heirs of said Mr. Fish, under the charge and management of Mr. Gabriel Perpall, as administrator of the estate; that the exponent has passed many times and very frequently by that place on his way to and from his own plantation, and has seen it cultivated, fenced in, and inhabited, in the full terms of having complied with all the prescribed stipulations to entitle them to the title of property, as it is very certain that the crops raised on the said land have supported for many years the family of Mr. Fish.

That what he has said is the truth under the oath he has taken.

That he is thirty-one years old and signed his deposition before me, together with His Majesty.

COPPINGER.
JOSE M. HERNANDEZ.

Before me.

JUAN D. EUTRALGO.

On the same day personally appeared Mr. Isaac Wicks, a resident of this city, and land owner, a native of New York, a widower, who, having been duly sworn according to law, offered to answer the truth to the best of his knowledge to all questions propounded to him.

Examined upon the same points as the preceding witness—

Said that he knows of his own personal knowledge to be true that the deceased Mr. Fish, and his heirs after, have cultivated for a period of more than ten years the lands that were granted to him at a place known as Graham's Marsh, situated at the head of the Matanzas River, and that said cultivation has continued without interruption or intermission. Besides these, have always been the necessary houses and other improvements necessary and required to comply with the conditions pre-
654 scribed by the Government. The cultivation of said lands being at present under the charge of Mr. Gabriel Perpall, as administrator of the estate of Mr. Fish, deceased. That all what he has deposed and said is the truth under the oath he took; that he is 65 years old. And the foregoing deposition having been read to him, he said it was correct, and signed the same, together with his excellency, before me

COPPINGER.
ISAAC WILKES.

Before me.

JUAN DE EUTRALGO.

The same day personally appeared Mr. Fernando de la Moya Arredondo, a native and resident of this place, a land owner, & married, who having been duly sworn according to law, declared that he would answer the truth to all questions propounded to him to the best of his knowledge. Questioned like the previous witness, said that he has very frequently passed by the plantation of the deceased, Mr. Jesse Fish, for many years, which is situated at the place known as Graham's, and the same piece of land described in the plan presented by Mr. Gabriel Perpall, and now before witness; and on which land there are houses, fences, and people working, as it has been for over ten years. That deponent knows and has known said plantation since it was owned by the said Mr. Fish, deceased, and can assure that by that he has seen of the place since its occupation by Mr. Fish, and after by his heirs, they have complied with the conditions prescribed by the Government; that what he has said is the truth under the oath taken, and that he is of 31 years of age. And he signed his deposition, together with his excellency, before me.

COPPINGER.
F. M. ARREDONDO.

Before me.

JUAN DE EUTRALGO.

655 I hereby declare and certify that the conditions referred to by the preceding decree are: First. That the grantee, his heirs and successors, must, within two years from the date of the titles, build on the lands granted a house with its chimney, in accordance with his means and the number of his family.

Second. That it will be his duty to have the land clear and in proper condition for its cultivation. And also that within three years he shall have at least five head of horned cattle for each fifty acres of land not under cultivation.

That if any part or portion of said land should be needed for public works or improvement it shall be given, and replaced by other land in another place at his election, or he shall be paid for it after being properly valued by experts.

Finally, that although the donation and grant is made perpetually, the recipient or his heirs and successors will not have the right to sell or dispose of the said lands to other parties until and after the expiration of ten years of possession. And even then the first sale must be made with permission of the Government, as otherwise the sale will be null, which conditions appear on the titles issued by this Government to some settlers, after having received the royal order in reference to the granting of lands. And in compliance with what has been ordered, I hereby sign this document in the city of St. Augustine, Florida, the 22d day of April of 1819.

JUAN DE EUTRALGO,
Notary of the Government.

ST. AUGUSTINE, *April 24th, 1819.*

In view of the foregoing, and in consideration that the heirs of the deceased, Mr. Jesse Fish, have completely proven and justified that they have been in actual possession for more than ten years of
656 the lands granted by this Government, and have cultivated the same since the year 1791 at the Graham's Marsh, and that they have entirely complied with all the conditions prescribed for grants of that nature.

Let the corresponding title of absolute property be issued in favor of the said heirs of Mr. Fish, deceased, represented by Mr. Gabriel Perpall, for five hundred acres, which have been measured, surveyed, and marked, in accordance with the plan annexed to the original petition.

COPPINGER.

Before me.

JUAN DE EUTRALGO,
Notary of the Government.

In St. Augustine, the same day, month, and year, I notified the preceding decree and order to Mr. Gabriel Guillemo Perpall.

I give faith.

EUTRALGO.

ST. AUGUSTINE, FLORIDA, *February 26th, 1897.*

I certify the foregoing to be a true and correct translation from the annexed document in the Spanish language.

WM. A. VANDRELL,
Translator.

(Endorsed:) Furman v. Mitchell. Defts. Ex. 15th. Filed in evidence this Jan'y 19th, 1897. H. H. Buckman, master. Refiled with translation attached this March 3d, 1897. H. H. Buckman, master. Proceedings in re Graham Swamp Grant, 500a & translation.

657 *El exponiente pide 300 acres de tierra en Santa Anastasia.*

San Agustin, 16 de febrero de 1793.

Permitase á esta parte en el parage que solicita, donde á su tiempo se le medirán en las tierras que le corresponda todo sin perjuicio de tercero y con la condicion de no permitir fogatas que puedan ser comunicadas al monte de la misma ysla sobre de que deberá usar de las mayores precauciones.

QUESADA.

SOR. GOBERNADOR: Dn. Lorenzo Rodriguez, natural y vecino de esta ciudad, con el debido respeto se presenta ante U. S. y dice: Que hallandose con algunos esclavos y sin tener en que emplearlos, ha proyectado destinarlos al cultivo á algun pedazo de tierra, en cuya virtud suplica á U. S. se digne concederle trescientos acres en la ysla de Santa Anastasia, en el parage nombrado el caño de la Escolta, por la parte del norte. Gracia y justicia que no duda alcanzar de U. S.

Florida, 15 de febrero de 1793.

Por el suplicante que no sabe firmar lo hizo á su ruego.

FERNANDO DE LA MAZA ARREDONDO.

U. S. SURVEYOR-GENERAL'S OFFICE,
Tallahassee, Florida, October 26, 1896.

I, W. H. Milton, jr., do hereby certify that I am the United States surveyor-general for the surveying district of Florida; that the
658 Spanish archives relating to lands in East Florida are recorded or left among the records in my official custody; that I have compared the foregoing transcript with the original thereof, in my custody, and do hereby certify that the same is a true and correct copy of the original document, in the Spanish language, found among the archives and documents belonging to the records in the office of the U. S. surveyor-general of Florida, in my custody.

Witness my hand and private seal, having no official seal of office, the day and year above written.

[SEAL.]

W. H. MILTON, Jr.,
U. S. Surveyor-General of Florida.

(Endorsed:) Def'd't's Exhibit 17. Furman vs. Mitchell. Filed in evidence this Jany. 19, 1897. H. H. Buckman, master. Refiled with translation March 3, 1897. H. H. Buckman, master. In re Rodriguez grant. Lorenzo Rodriguez. Feb. 16, 1793. N. 7.

659 [Translation.]

Petitioner asks for 300 acres of land on St. Anastasia.

St. Augustine, the 16th of February, 1793.

Let this party be permitted to establish himself at the place he solicits, where in due

GOVERNOR: Lorenzo Rodriguez, a native and resident of this city, with due respect to your excellency, states: That being the owner of several slaves and not having anything for their occupation, he has projected to employ them in the cultivation of some pieces of land,

time the quantity of land corresponding to him will be surveyed (measured) without prejudice to third party and conditioned that he will not permit fires which might communicate with the woods on the same island about which he must use the greatest precautions.

QUESADA.

and for this purpose requests of your excellency that you may have the goodness to grant him (300) three hundred acres on the island of Saint Anastasia, at a place called "Caño de la Escolta," Creek of the Escort, on the northern part. A favor and justice which he hopes to obtain from your excellency.

Florida, 15th of February, 1893.

For the petitioner who does not know how to write and at his request.

FRAN. DE LA MAZA.

ST. AUGUSTINE, FLA., *Feb. 26th, 1897.*

I certify the foregoing to be a true and correct translation from the annexed document in the Spanish language.

WM. A. VANDRELL,
Translator.

Furman vs. Mitchell. Filed in evidence Mch. 3d, 1897. H. H. Buckman, master.

660 San Augustin y Julio 3 de 1802.

Ynforme el Yngeniero Comandante.

WHITE.

Enterado de la Ynstancia y cumpliendo con el anterior decreto, hago presente á U. S. que no habiendo inconveniente en que se beneficien las tierras de que se trata, soy de parecer de que se le concedan, si U. S lo tiene a bien, con las circunstancias de que no ha de fabricar de mamposteria ni cerca de la Torre de la Vigia en ciento y circuenta varas, y se ha de sugetar á las disposiciones accidentales que exi-

661 ija el buen servicio del Rey

SOR. GOBERNADOR: Dⁿ Francisco Xavier Sanchez, vecino de esta ciudad, con el respeto debido ante U. S., dice: Que hallandose la Provincia en las mas evictua situacion, motivado á los repetidos acometimientos hostiles de los Yndios y que con toda probavilidad puede llegar el caso de verse obligado á avandonar sus avitaciones y retirar sus esclavos á donde puedan estar con mas seguridad, y por quanto se hallan bacantes las tierras que ocuparon les negros libres en la ysla de Santa Anastasia, situada al hueste de la Torre que sirve de vigia, siendo dicho parage aproposito para fabricar algunas chozas para que por lo pronto puedan aloxarse algunos negros y sus hijos, tambien los demas esclavos en caso necesario: Por tanto suplica rendidamente se sirva concederle veinte acres de dicho terreno para los fines que lleva expresados: Gracia que espera merecer de la justificacion de U. S.

San Augustin de la Florida, 3 de Julio.

FRANCO. XAVIER SANCHEZ.

SAN AUGUSTIN, *8 de Julio de 1802.*

Concedese á esta parte el terreno que selicita sin perjuicio de tercero y con las condiciones de que no podrá fabricar de mamposteria, ni cerca de la Torre de la Bigia en distancia de ciento y

sin á U. S. reclamar resarcimientos, que es cuanto puedo informar á U. S. que se servirá determinar lo que fuere de su agrado.

San Augustin, 6 de julio de 1802.

NICOLÁS BARCELÓ.

cincuenta varas, y que se ha de sugetar á las disposiciones accidentales del Gobierno sin reclamar resarsimientos.

WHITE.

Se expidió certificacion.

PIERRA.

U. S. SURVEYOR-GENERAL'S OFFICE,
Tallahassee, Florida, October 26, 1896.

I, W. H. Milton, jr., do hereby certify that I am the United States surveyor-general for the surveying district of Florida; that the Spanish archives relating to lands in east Florida are recorded or left among the records in my official custody; that I have compared the foregoing translation with the original thereof in my custody, and do hereby
662 certify that the same is a true and correct copy of the original document, in the Spanish language, found among the archives and documents belonging to the records in the office of the U. S. surveyor-general of Florida in my custody.

Witness my hand and private seal, having no seal of office, the day and year above written.

W. H. MILTON, Jr., [SEAL.]
U. S. Surveyor-General of Florida.

(Endorsed:) Defts. Exhibit 18. Furman vs. Mitchell. Filed in evidence this Jany. 19, 1897. H. H. Buckman, master. Refiled, with translation attached, March 3, 1897. H. H. Buckman, master. In re Sanchez grant. N. 70. F. X. Sanchez. July 8, 1802.

663 [Translation.]

St. Augustine, July 3, 1802.

Let the engineer commandant give his information.

WHITE.

Acquainted with the petition and complying with foregoing decree to have to report to your excellency, that there being no reason or obstacle to prevent the improvement of the lands in question, I am of opinion that they be granted to petitioner if your excellency deems it well. But under the conditions that he shall

GOVERNOR: Francisco Xavier Sanchez, a resident of this city, with all due respect to your excellency, states: That the province being under the most critical condition owing to the repeated hostile events by the Indians, and that with all probability the case may arrive when he will be compelled to abandon his land and home, and withdraw his slaves to some other place that will offer for them more safety.

And whereas the lands formerly occupied by the free negroes on the island of St. Anastasia, situated to the west of the tower which serves as a "lookout," are vacant. And said lands being suitable for the erection on same of some huts or cabins, where at least some negroes and their children may find temporary shelter, and where, also, if necessary, the rest of the slaves may go.

Therefore, to your excellency he most humbly prays and requests that you may be good enough to grant him twenty acres of said land for the

not build of stone, nor within a distance of 150 yards from the tower, "Lookout." And he becomes subject and amenable to all accidental dispositions which the good service of His Majesty
664 may require and demand without any right to damages.

This is all the information I can give to your excellency, who will ordain whatever may be your pleasure on the premises.

St. Augustine, July 6th, 1802.

NICOLAS BANETO.

uses and purposes aforesaid. A favor which he hopes to receive from the well-known justice of your excellency.

St. Augustine, Florida, July 3d, 1802.

FRAN'CO XAVIER SANCHEZ.

ST. AUGUSTINE, *July 8th, 1802.*

The land solicited by this party is hereby granted to him, without prejudice to third party, and conditioned that he shall not build of stone within a dis. nce of one hundred and fifty (varas) yards, and that he shall be liable and subject to all the dispositions of the Government, without any right to any claim for damages.

WHITE.

A certified copy was issued.

PIERRA.

ST. AUGUSTINE, FLORIDA, *Feb. 26th, 1897.*

I certify the foregoing to be a true and correct translation from the annexed document in the Spanish language.

WM. A. VANDRELL,
Translator.

665 *Notice.*

SURVEYOR'S OFFICE, TALLAHASSEE, *March 8th, 1833.*

Those persons having confirmed claims and donations to land within the limits of the diagram furnished to the keeper of the public archives at St. Augustine (for their information), are hereby notified that deputy surveyors are about to be dispatched for the survey of that section of country designated as aforesaid, embracing both sides of the St. Johns River and the margin of the Atlantic south of the parallel at Talbots Island, about 70 miles; also that others will be dispatched this fall to extend the surveys south between Lake George and the Atlantic, and possibly on the west of the St. Johns River between the Arredondo survey and said river, embracing the mouth of the Ocklawaha. The calls of the original grant or donation will be the only guide for the survey of all confirmed claims, and the evidence of confirmation must be the certificate of the keeper of public archives, under his hand and seal, furnished by the claimants or their agents to the deputy surveyor of the district in which said claims may be situate, to enable him to execute his duties under the instructions furnished him. I confidently hope that every necessary facility will be afforded to the surveyors to enable them to lay down the private claims without delay, otherwise they must proceed with the labours in surveying the country as public domain. To point out and identify the beginning corner of each claim by the owner or agent is of the utmost importance.

ROBERT BUTLER,
Surveyor-General.

666 *Additional notice.*

SURVEYOR'S OFFICE, TALLAHASSEE, *13th Nov., 1833.*

Diagrams have this day been enclosed to the keeper of the public archives and editor of the Florida Herald, setting forth the country recently surveyed and such other parts as are designated to be executed this winter and spring, for the information of all persons interested.

ROBERT BUTLER,
Surveyor-General.

(Endorsed:) Notice for editor St. Augustine Herald.

U. S. SURVEYOR-GENERAL'S OFFICE,
Tallahassee, Fla., Nov. 7, 1896.

I, W. H. Milton, jr., U. S. surveyor-general of Florida, do hereby certify that the foregoing transcript is a true and correct copy of the original thereof on file in this office.

In testimony whereof I have hereunto set my hand and private seal, there being no seal of office, the day and year above written.

W. H. MILTON, Jr., [SEAL.]
U. S. Surveyor-General.

(Endorsed:) Defendant's Exhibit 19. Filed in evidence Jan'y 19th, 1897. H. H. Buckman, master. Notice. Robert Butler, surveyor-general.

667 SURVEYOR'S OFFICE, TALLAHASSEE, *13th Nov., 1833.*

SIR: Your account for printing notice of the 8th March last per my order has been received.

On reading the publication and comparing with the original I am constrained to say that I cannot receive as vouchers to the Government a document differing so materially with the original, a copy of which the Government was furnished with at the same time it was sent for publication. You have made me in said publication assume the exercise of official duties on both sides of the Atlantic about seventy miles.

Have the goodness to republish the notice three times in your paper in strict conformity with the original, a copy of which is herewith accompanied, and append the editorial part of present date. You have also accompanied, for the information of all persons calling at your office, a diagram similar to that sent to the keeper of the archives, showing what country is about to be surveyed this winter and spring, as well as that recently executed. You will then please send me duplicate accounts with the publication as vouchers annexed, making your charge for the entire printing, and I will meet your demand promptly.

Very respectfully, yr. obt. servt.,

E. B. GOULD, Esqr.,
Edr. Flora. Herald.

Notice.

SURVEYOR'S OFFICE, TALLAHASSEE, *March 8th, 1833.*

Those persons having confirmed claims and donations to land within the limits of the diagram.

(Endorsed:) 13 Novr., 1833. To E. B. Gould, editor, etc., respecting advertisement of notices to claimants.

668 U. S. SURVEYOR-GENERAL'S OFFICE,
Tallahassee, Fla., Nov. 7, 1896.

I, W. H. Milton, jr., U. S. surveyor-general of Florida, do hereby certify that the foregoing transcript is a true and correct copy of the original thereof found filed in this office in a bundle, marked "Notices published in certain newspapers, and mailed to claimants of private claims."

In testimony whereof I have hereunto set my hand and private seal, there being no seal of office, the date above written.

W. H. MILTON, [SEAL.]
U. S. Surveyor-General of Florida.

(Endorsed:) Defendant's Exhibit 20. Filed in evidence Jan'y 19, 1897. H. H. Buckman, master. Surveyor Gen. Butler's notice.

669 I, Lucius B. Wombwell, commissioner of agriculture of the State of Florida, in whose custody as such commissioner of agriculture aforesaid are the letters, maps, patents, and records relating to the public lands of the State of Florida, do hereby certify that from such maps and papers that the lots numbered two (2) and three (3) of section thirty-two (32), in township seven (7), south of range thirty (30) east, was sold to Alexander Magruder and William Logan by the trustees of the Internal Improvement Fund of the State of Florida, and that a deed to the above-described land was issued by said trustees of the Internal Improvement Fund to said Alexander Magruder and William Logan March 11th, 1867; said deed being numbered 4,773, and that the said board of trustees of the Internal Improvement Fund of the State of Florida sold lot six (6) of section twenty-nine (29) in township seven (7), south of range thirty (30) east, to Charles F. Hopkins and Albert D. Rogero, and issued a deed of conveyance to said Charles F. Hopkins and Albert D. Rogero for said above-described land June 24th, 1867; said deed being numbered 4821, and that the said board of trustees of the Internal Improvement Fund of the State of Florida sold lots two (2) and three (3) of section twenty-nine (29), in township seven (7), south of range thirty (30) east, to Albert D. Rogero and issued a deed of conveyance for said described land to said Albert D. Rogero, September 25th, 1867, said deed being numbered 4890, and I further certify that all of the above lands was patented to the State of Florida by patent No. 6, St. Augustine district as inuring to the State of Florida, under the provisions of the act of Congress of September 28th, 1850.

In testimony whereof I have hereunto set my hand and affixed the seal of the department of agriculture of the State of Florida, this the 28th day of December, A. D. 1896.

[SEAL.] L. B. WOMBWELL,
Comm. of Agriculture.

(Endorsed:) Deft's Ex. 21. Filed in evidence Jan'y 19, 1897. H. H. Buckman, master. Certificate commission of A. G. Florida.

670 TERRITORY OF FLORIDA, *Saint Johns County:*

This indenture made the thirty-first day of December, in the year of our Lord eighteen hundred and twenty-five, between Clarissa

Fish and her children, Sophia, John, and Elizabeth Fish, and the said Clarissa as the natural guardian and procurator of her four minor children, Mary, Diana, Harriet, and Phebe Fish of the first part, and Mr. John Perpall of the second part; all of the second part, all of the city of Saint Augustine, county aforesaid, witnesseth: That the said parties of the first part for and in consideration of the sum of one thousand dollars, paid to them before the signing and sealing of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, conveyed, and delivered, and by these presents do grant, bargain, convey, and deliver unto the said party of the second part all that tract or parcel of land containing five hundred acres, situated in Graham swamp at the head of the Matanzas River, which was granted to Mr. Jesse Fish by the Spanish Government on the first of April, seventeen hundred and ninety-one, as his head rights, and which tract of land was conveyed by Mrs. Sarah Fish, his mother and administrator, by a deed of gift to the said Clarissa and her afore mentioned seven children, by an instrument to the effect bearing date the tenth day of August, eighteen hundred and twenty-three; together with all and singular the appurtenances, privileges, advantages, and hereditaments whatever belonging or in anywise thereto appertaining.

To have and to hold the above bargained premises to the said John Perpall, his heirs and assigns, to their own proper use and behoof forever, and the said parties of the first part for themselves, their heirs, executors, and administrators, do covenant and agree with the said party of the second part that the time of signing and sealing of there
671 presents they are possessed in their own right and title of the aforesaid premises in fee simple, and that they do hereby convey the same over to the said party of the second part free of all incumberance, lien, or taint whatever, and also that they do and will warrant the same, and all else herein contained unto the said John Perpall, his heirs and assigns, against themselves and all persons claiming under them, and against all other claim or claims whatever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CLARISSA × FISH. [SEAL.]
SOPHIA FISH. [SEAL.]
JOHN FISH. [SEAL.]
ELIZABETH FISH. [SEAL.]
CLARISSA × FISH, [SEAL.]
For Mary, Diana, Hariet, and Phebe Fish.

Signed, sealed, and delivered in presence of—
GEO. T. F. CLARKE.
H. CROSTHWAITE.

TERRITORY OF FLORIDA, *County of St. Johns:*

Be it remembered that on the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and twenty-eight came before me, the subscriber, clerk of the county court for the county aforesaid, George T. F. Clarke, and made oath that Clarissa Fish, Sophia Fish, John Fish, and Elizabeth Fish signed and sealed the above instrument of writing as

for their own act and deed and for the purpose therein mentioned, in his presence and in the presence of H. Crosthwaite, and that himself and the said Crosthwaite subscribed their names as witnesses thereto. Whereupon I have recorded the same.

Witness my name and the day and year above written.

BERNARDO SEGUI, *Clk. Ct. Cl.*

672 STATE OF FLORIDA, *St. Johns County:*

I, D. L. Dunham, clerk of the circuit court for St. Johns County, Florida, do hereby certify that the above and foregoing instrument of writing is a true and correct copy of a deed of conveyance from Clarissa Fish et al. to John Perpall of land at head of Matanzas River, Graham Swamp, in St. Johns Co., Fla., as found of record in Deed Book "H," pgs. 80 & 81, public records of St. Johns Co., Fla., of which I am custodian.

In testimony whereof I hereunto set my hand and seal of circuit court this 9th day of January, A. D. 1897.

[SEAL.]

D. L. DUNHAM,
Clerk Circuit Court.

(Endorsed:) Defts. Exhibit 22. Filed in evidence Jan'y 19th, 1897. E. H. Buckman, master. Certified copy of deed, Clarissa Fish et el. to John Perpall.

673 SANTA ANASTASIA.

Entre dicha playa por el norte y la ysla de St. Anastasia al sur se presenta la barra de San Agustin, formidable á cuantos barcos entran ó salen por ella y en ninguna ocasion accesible á buque que cale arriba de ocho pies con la desagradable circunstancia de ser movediza y constar por esperiencia que sus aguas van progresivamente en menos de modo que hay que rezelar que quedará con el tiempo del todo inpracticable no aplicandose algun remedio, el que mas acequible parece es de hacer revivir el proyecto discurrido antes de ahora por el gobernador, Dⁿ. Manuel Montecino, de unir un caño llamado Dⁿ. Pablo que de halla en la rivera meridional del Rio San Juan dos leguas de la barra al Rio Norte ó de Sⁿ. Marcos, este se interna desde el puerto mismo de San Agustin siete leguas hacia el indicado caño, de manera que solo media entre ambos unas dos leguas de tierra faciles de cavar y tan anegadiza que en lluvias fuertes y mareas vivas se funtan las aguas del rio y caño.

La ysla de San. Anastasia se estiende unas cinco leguas hacia el
674 sur, su extremidad septentrional cubriendo la ciudad y formando la bahia; su mayor anchura es algo mas de una legua y la menor de media su terreno aunque poco fertil presta buen pasto para caballos y es capaz de mejora la separa del continente la ria de Matanzas de una milla de ancho que se remata en la punta meridional de la referida ysla en una barra de su mismo nombre transitable á barcos pescadores. En la ysla hay una intigua de piedra que sirve de vigia para avisar a la plaza las embarcaciones que se avistan junto á esta torre en que se mantienen destacados un sargento, un cabo, seis soldados y un artillero. Está colocado el almacen de polvora, hay tambien en ella canteras suficientes para cualquiera obras publicas ó particulares; por dentro de la barra de Matanzas está

situado un torreon que la mar rodea quando plena manteniendose en el destacados un sargento, un cabo y seis hombres.

VICENTE DE CESPEDES,
Goverdor. de Florida.

675 A. D. 1787.

A description of Santa Anastasia, bearing the above date. The dangerous bar and a proposed remedy. The entrance commanded by a lookout g'arded by six men and three officials. Matanzas with a force of eight men.

DON VINCENTE DE CESPEDES,
Governor of Florida.

(Endorsed:) Defts. Exhibit 23. Furman *vs.* Mitchel. Filed in evidence this March 3, 1897. H. H. Buckman, master. Description of the island St. Anastasia Harbor.

676 SANTA ANASTASIA.

This island of Santa Anastasia forms a beach on the north side and on the south the bar of San Agustin, a formidable bar to all vessels going in or out and at no time accessible to those drawing over eight feet, with the changeable circumstance that it is changeable; and it is knowingly experience' that progressively its depth of water is becoming less, so that fears may be entertained that in the course of time it may become entirely impassable unless some remedy is applied to it, the most accessible of which, it seems to me, should be to review or put in force the project, discussed before this by the late Governor Don Manuel Montiano, which is to unite the creek named Don Pablo, that is situated on the southern border of the river Saint John, two leagues from its bar, to the North River, or as otherwise called, San Marco. This latter runs from the very entrance of the port of San Agustin seven leagues into the interior in the direction of the aforesaid creek, so that only two leagues of land remain between the two points, and that of easy excavation. Besides, it is so swampy and low land that in heavy rains or in very high tides the waters of both the river and the creek unite.

The island of Santa Anastasia has an extension of five leagues in a southern direction, its northern extremity covering the city and forming the bay. Its greatest width is a little over a league, and i's smallest about a half league. Its soil, although very little fertile, affords good pastures for stock, and could be improved. It is separated from the mainland by the bay of Matanzas, which is a mile wide and which terminates at the southern point of the aforesaid island in a bar of the same name, passable only to fishing boats.

677 Upon the island these is a tower built of stone, which serves as a lookout to advise the city of any vessels that come in sight. Close to this tower is situated the powder house, which is guarded by a detatchment of six soldiers, a corporal, a sergeant, and an artillerist.

There are also on the said island stone quarries sufficient for all public or private works.

On the inside of the bar of Matanzas there is a round tower which in

flood tides is surrounded by the sea waters. It is guarded by a detachment of six soldiers, a corporal, and a sea*r*ge'nt.

(Endorsed:) Furman *vs.* Mitchell. Defts. Exhibit 23. Filed in evidence this Mch. 3d, 1897. H. H. Buckman, master. Description of the island at Anastasia Harbor.

678 A. D. 1805.

An account given of Mr. Dupont, who mortgaged his negro slav*e*s in St. Augustine for debt, and afterwards moved them to Georgia. He has no legal title from the King for his lands; stipulations in regard to improvements. Persons unwilling to settle on lands granted to others. Father Crosby occupies the lands at Matanzas; Dupont is arrested when he requests the cause for such a movement; published.

Bousquet makes himself odious by interfering with new settlers. A preference given to permanent settlers and not vagabonds, which are now in the majority.

ENRIQUE WHITE,
Governor of Florida.

679 Año 1805.

EX. SEÑOR: Don Josias Dupont, habitante que fue de esta provincia, transfierio su domicilio á los Estados Unidos de America en Abril de 1802, dejando con su hijo mayor, Don Gedeon, once negros y hipotecados para responder de ciertas deudas que tenia contrahidos. Dicho su hijo, habiesido prestado juramento de vassalaje á su H. M. en tres de Junio del dicho año, se le concediron setecientos acres de tierra con sus salados para veinte y cinco negros que deciaro de su propriedad, paso condiciendo los negros en Noviembre para incorporase con su familia con la que ha permanecido hasta ahora que ha regresado con el fin de pedir las tierras que fueron de su padre no para establicerse ni cultivarlas sino para venderles segun se acredita en no haber traido consigo negro alguno de los veinto y cinco con que ofrecio forman su establecimiento luego que hubiesen calmado las irrupciones de los Indios y habersele ya dado pasaporte para volver á los Estados Unidos con el unico negro que aqui tenia.

Las tierras que Dupont reclama del presbytero Don Miguel Crosby fueron mercedader á su padre á quien se le permitio establacerse en aquel pasaje quando vino á esta provincia en Abril de 1791, pero no solicito ni se le consideron formalmente por escrito las tierras que correspondian á su familia hasta Agosto 1792, desde cuyo tiempo las poseyo hasta 1802, que se retiro á esta plaza pasando despues á los Esta. Unidos sin haber adquierido ni despachadosele el titulo de propriedad de dichar tierra (2) pues la certificacion que su hijo acompana es solo un documento que se expide por la secretaria á todo nueva poblador á quien se agracian tierras para que puede tomar possesion de ellas y le sirva de resguardo pero no dar derecho de propiedad adquierendose esta quando á nombre del Rey se les despacha por la escribania el correspondiente titulo pudiendo desde entonces enagenaslar venderles transfeirlas á los hijos y hacer de ellos el uso que les convenga de que se infiere que careciendo Don Joseas de semejante titulo no pudo transferir la propriedad de las tierras á su hijos y mucho menos no siendo a su fallecimiento vasallo de V. M.

680 Aun considero á Dupont con menos derecho á las tierras que pide de Don Francisco Rovira siendo el documento que presente una escritura de venta de las mejoras y no del terreno segun lo acredita la misma escritura pues nunca se ha permitido la venta de tierras á no ser que los agracicidos hayan adquirido su propriedad y aunque anteriemente se consentia el traspaso de ellas se ha prohibido ultimamente por los muchos abusos que se notaban.

El individo que adquirir tierras por traspaso estaba obligado á cumplir las condiciones con que fueron mercedades y son las agentes. Que los agraceddos han de cultivar las tierras diez años consecutivos con el numero de esclavos que corresponde á la cantidad de acres que se les haya concedido que antes eran cinquenta acres para cada negro y ahora veinte y cinco. Que han de construir casa y han de criar cierta cantidad de ganado vacuno. Es publico y notorio que Don Gedeon ninguna
(3) de estas condiciones a cumplido pues no ha tenido ganado ni negros suyos y no han vivido en aquel pasaje ni lo ha cultivado como el mismo me lo ha confesado de que se prueba no solo el ningun derecho que tiene á las tierras que pide sino tambien que la venta de los negros fue una venta fingida porque nunca las ha habido en aquel terreno hasta ahora que Robira ha fabricado una casa.

Por el expediente y certificacion que incluyo á V. A. consta que Dupont mudo de domicilio en Abril de 1802, y que a su hijo se le dio permiso en Noviembre del mismo año para que llevarse los negros que habian quedado aqui de tenidos desde cuya fecha no ha regresado á esta provincia hasta el mes pasado. De estos datos ciertos unidos á las declaraciones de los testigos presentados por el presbytro Crosby y por Don Francisco Robera y la confesion del mismo Dupont se evidencia que tanto el terreno de su padro como el que le fue cedido por Richardson Ryan han sido cultivados á la menos en dos años seguidos y de consiguiento deben perderlos con arreglo al articulo nueve del edicto. Esto supuesto pasare a manifestar V. M. los justos motivos que he tenido para no oir judicialmente a Dupont segun lo ha solicitaba. Primero porque no teniendo derecho para reclamar tierras sino los vasallos de V. M. y no considerando á Dupont en esta clase no debia en justicia oirle ni aun extrajudicialmente.

681 Que Dupont no deba ser considerado como nuevo poblador me parece que no cabe en ello duda, pues como otros muchos, sin haver dado señales de un establecimiento fijo andan vagantes, y cuando reciden [live] en la provincia se tienen por vasallos de V. M., y cuando
(4) reciden en los E. Unidos se tienen por ciudadanos de ellos, y sin ser lo uno ni lo otro desean gozar los fueros y privilegios de ambas naciones.

El Rey permite el establecimiento del extranjeros para fomento del pais, y es visto que semejantes vagamundos contribuyen á el, antes, por el contrario, como verdaderos canganos chupan de los industriosos publadores.

Segundo. Por estar determinado por el citado edicto que se decidan los asuntos de tierras por una sumaria informacion, esto es sin formen ni estrepito judicial cuya determinacion no tuvo otro objeto que cortar los muchos pleitos que se originiaban con atraso de la agricultura y poblacion, pues por temor de ellos no habia quien pidiese las tierras que por años enteros estaban incultas, habiendose ya verificado que algunos Americanos

que habian venido con intento de domicilicarse en la provincia regresaron á su patria diciendo que sin embargo de que habian visto muchas tierras abondonadas no se atribian á solicitarlos porque informandose sobre ellas les habian enterado que estaban concedidas á otros y que ellos no querian disputas con nadie y aunque se les estimulo por la secretaria á que las solicitasen no pudo vencerse su repugnance. Pero ya dicha providencia ha remediado este daño animando á muchos á pedir tierras incultas tranquilizando tambien el espiritu de los colones que posen tierras concedidas anteriormente á otros persuadidos de que aunque estos las reclamen no tendran que sufrir los gastos y perjuicios de un pleito dilatado para averiguar el derecho que cada uno tenga á las tierras en disputa.

(5) Tercera. Porque habiendose desposeido á otros habitantes de las tierras que no cultivaban del mismo modo que a Dupont sin haberles servido el pretexto general que todos alegan de la revolucion del año de noventa y cinco y de las hostilidades de los Indios no he
682 hallado fundamento algein para que este fuese privilegiado; antes bien le considero de peor condicion, pues aunque aquellos no trabajaban las tierras que se les quitaron por lo menos lo verificaban en otras y se hallaban establecidos buena fe con sus familias y esclavos, cuyas circunstancias no concurren en Dupont fuere de que se hubiese dado un ejemplo perjudecialisimo, porque otros pretenderian se les oyeren tambien judicalmente fundadose talvez en causas mas justos que Dupont volviendo de este modo á abrirse la puerta que se ha procurado cerrar por lo expuesto en mi segundo motivo.

Cuarto. Porque aunque anteriormente se oian judicalmente los asuntos de tierras, siempre comprendi que pedia el interes de la provincia como naciente colonia, se aboliese semejante metodo que solo era util al escribano y enredadores que por no haber facultativos se metian á formar escritos y defender á los litigantes ocasioncindoles gastos considerables y á que se determinnasen á los mas por un expedienta de oficio para averiguar si el desposeido habia cumplido las condiciones con que se daban las tierras ó el derecho que por cualquiera titulo puchare tener en ellas, no pareciendome justo se los compromititiese á dejar el terreno ó en sufrir los gastos y malos ratos que traen consigo los litigios á los habitantes que no tenian otro culpas que haber pedido tierras que vian incultos, y por lo tanto las consideraban vacantes ó abandonadas no estando obli-
(6) gados á saber si habian sido concedida á otros.

El reclamo de Dupont no me hubiera sido tan extraño si hubiese procedido con verdad y sinceridad pero que vierta en su escrito mil facilidades, y que has haga presentes a quien no debia dudar se hallaba instruido, de todo lo contrario es para lo que se necesita ó de mucha ignorancia ó de una intrepidez pocas veces vista.

Notaré V. A. los principales puntos porque seria preciosa de otro manera formar en volumen. En el escrito primero dice que á su llegado á esta plaza desde los Estados Unidos encontró que el padre Don Miguel Crosby habia tomado sus tierras en Matanzas quando es notorio que la familia de Dupont pasó á los Estados Unidos en abril de 1802, y que el no fue hasta noviembre. Consta ademas que el plantaje no tenia
683 cercas quando Crosby tomó posesion de él; que las casas estaban arruinadas y que el negro que dice Dupont dejó al cuidado todo no vivia en el plantaje. Con el escrito numero seis expone que Don

Miguel Crosby y Don Francisco Robera le habian quitado sus tierras durante su ausencia y de su familia los Estados Unidos donde habian pasado arreglado ciertos a suz testos. Falta en la verdad en decir que hubiesen pasado á los E. Unidos por el fin indicado, pues está demostrado que fué por haber mudado de domicilio; convengo que hizo bien en retirarse quando los Indios le obligaron á ello, pero debió haber vuelto al cultivo de las tierras luego que cesaron las hostilidades de los salvajes, como lo hacen los demas colonias que se refugiaron aqui y la isla de Amelia. De igual tenor es lo que dice de que el presbitro Crosby,
(7) al tomar posession de las tierras, hechó fuera á los esclavos de su padre, pero el mismo Dupont me dijo que nunca habia habido en el plantaje sino un negro, porque aunque habia dado orden parar que fuesen un negro y unica negra que habia dejado en la ciudad, no se habia verificado. Ademas, en Setiembre de 1802 se hicieron las paces con los Indios y en Noviembre se llevó Dupont los negros que habian quedado de su padre, luego no pudo el presbytro Crosby, á quien se le concedieron las tierras en Febrero, hechar los dichos esclavos; ademas estoy informado de que quando se fué Dupont á los E. Unidos, dejó dos negros viejos y una mulata en la ciudad y que el uno murió y el otro se entregó á un vecino para cuidar su ganado y la mulata fué conducida á los E. Unidos. En el escrito se refiere las perdidas que su padre sufrió por los Indios; fundando en ello algun merito, diré á V. que tanto este como otros muchos son dignos de compasion y de que se le den gracias, exceptuado al dicho Dupont por haberse ausentado con su familia quando se hallaba la provincia en peligro, cuyo mal exemplo pudieron seguir otros habitantes; pero tuve la satisfacion de que nadie le imitase. Tambien quiere alegar algun merito diciendo que pasaron á los E. U. con permisso mio, y este permisso no fué sino el pasaporte que se da á todos los que salen de la provincia; y el que dí á Dupont fué para que pudiese extraer los negros que habian quedado detenidos, porque era preciso que justificase ser
684 de la propriedad de su padre para permitir su conduccion á los E. Unidos.

No obstante haberse prevenido á Dupont por medio el escribiano que acudiese á la secretaria para imponerlo de la providencia recaida á
(8) su demander de habersele entregado los escritos que habian presentado y de haber sido llamado por mi para hacerlo la misma prevencion, nada fué bastante para hacerlo desistir de presente escritos por la escribiana, viendome obligado á poner á los dos arrestados, convencido de que se debilita la autoridad si se tolera que las ordenes de los jefes sean resistidas.

Luego á V. leir el ultimo escrito de Dupont y no dudo conocerce el atribimiento con que se halla escrito; dice en el que estaba preso por haber insistido en que se le oyese en juicio y esto es falso, pues su prision fué por desobedecer á mis repetidas providencias.

En nueve años que llevo de gobierno en esta provincia, es la primera vez que se ha solicitado por los que he puesto prestor que se publica la causa de su prision; semejante pretendieron atendidas las circunstancias de las personas no puede provenir sino de una ignorancia atrevida [bold] y orgullosa y para que V. S. lo sepa, daré noticia de la persona de Bosquet: este joven, que es hijo del cirujano del hospital militar, pasó á los Es. Unidos donde aprendió el idioma ingles, y habiendose sido á la Habana se casó en ella,

consiguiendo alli los cuatro reales diarios que su V. M. senaler á las cabezas de familia que se domicilian, y aquí parece que ha eligido un medio de buscar dinero que es defender y formar escritos á los nuevos pobladores, y creo que no será él que menor aproveche de su abilidad. Como detesto á esta clase de papelistras por los desordenes que ocasionan, he significado á el dicho Bosque que si en adelante no se corregia le haria salir de la provincia.

(9) Entre los particulares que reconvine á Dupont fué el asegurar que las declaraciones tomadas á los testigos se habian hecho bajo juramento y dijo despues que no habia dicho tal cosa; quando reconvenido por mi, me contestó que cuando el presbytro Crosby le presentó los documentos se hizo cargo el testigo de que todo era cierto; este incidente confirmó la sospecha que yo tenia de que Dupont ponia sus firmas sin saber lo que firmaba y que este era el motivo porque insistia en que se le oyese y no por las razones que expone y se permite que se prueven las tachas si se les pone alguna, y finalmente se observa todo lo que es pre-
685 ciso para una justa determinacion, pues de otro modo no pudiere decidirse asunto alguno ese juicio verbal, lo que no sucede en los juicios formales, porque pronunciadas las sentencias debe recurrirse al juez superior. Es verdad que en los jucios verbales no hay trastados duplicas, ni pruebas por escrito, ni dan lugar á que se formen nuevos incidentes, y por esto no son agradables á los que viven de la pluma y son contrarios á la utilidad publica y al bien de la provincia.

Los tierras se dieron de nuevo ó por haberse desposeido al que no las cultivo en dos años consecutivos y no de otra manera tambien se presentan testigos que por lo regular son proximas á las tierras en cuestion los que no pueden ignorar si las tierras han sido ó no cultivadas fuera de que en el caso presento concurre una circunstancia que quita toda dudas y es la ausencia y mudanza de Dupont, de su familia y sus negros á los E. Unidos en el año 1802. Teniendo por sospechosa la solicitud que hace Dupont para que se le permitiese pasar con el escribano á la casa de un sujeto para estraherle cierto papel y no paraciendome justo permitir que se atentarse tal vez contra alguna persona de provedad sacando de su poder algun documento que fuese origen de desavenencia (discord) no quiere acceder si no se me declaraba el nombre de la persona y la naturaleza del papel y estuve actado pues se trataba de una carta del presbitro, Crosby, á Francisco Pellicier en que vertia ciertas expressiones contra mi asesor general y despues al pedirle la carta mi dijo que la habia quemado.

Me ha detenido en tanta menudencia porque he querido dar una ligera idea del caracter de un gran numero de estos habitantes cuyas diferencias sobre tienas fraudes y abusos contra la real hacienda necesitan ciertas arreglo y para esto incluyo con el numero ocho los medios que consideu conducendos al fin indicado. Mucha importa quietar obstaculos á la agricultura dando tierras á los estranjeros que venian sin exponerlos á pleitos que tanto desanissian y obligar á un establicimiento fijo á los que no lo tienen impediendo que regreson á los Es. Unidos sin conseguir su objeto de lo contrario sera siempre esta provincia una colonia de vagamundos expecudaladores y negrociantes (traders) americanos.

Deos guarde.

ENRIQUE WHITE, *Governador.*

San Augustin de la Florida, 31 de Mayo de mil ochocientos y cinco.

686 1805.

YOUR EXCELLENCY: Jossias Dupont, a former resident of this province, transferred his residence to the United States of America in the year 1802, leaving in the possession of his elder son, Don Gedeon, eleven negro slaves whom he had mortgaged as security for certain debts he had contracted.

This aforesaid son, having taken to oath of allegiance to H. M. on the third day of June of the same year, there was granted to him seven hundred acres of land with the corresponding salt marshes to the twenty-five negro slaves whom he declared to be his property. He left to join his family, taking away with him the aforesaid negro slaves, in November of the same year, remaining with his family until now that he has returned with the object of claiming the lands that has belonged to his father—not with the intention of settling himself upon them, or of cultivating them, but simply to sell them, as it is proven by the fact of his not having brought with him one single slave out of the twenty-five, with whom he had promised and agreed to form his settlement as soon as the uprising of the Indians had subsided, and the further fact of his having already procured a passport to return to the United States with the only negro slave that he had here.

The lands which Dupont claims from the Presbyter Don Miguel Crosby were granted to his father, who was permitted to locate himself upon them when he first came to this province in the month of April, A. D. 1791.

But he never asked for, nor was granted to him formally in writing, the lands corresponding to his family until the month of August of 1792, from which time he possessed them until the year 1802, when he came to this city, whence he left for the United States without ever having obtained the title of property of the said lands, as it was never issued to him. The certificate which his son has presented is a simple document which was issued by the secretary of this Government to all new settlers who receive grants of lands, in order that they may take
687 possession of them, and as a protection, but it does not convey a true title to the property. That being only obtained when in the name of the King, the secretaryship extends the corresponding title, by virtue of which the party has from that moment the right to bargain, sell, or transfer them to his children and make the use of them that may be most suitable to him.

From which it is inferred that, as Don Jossias did not have such a title, he could not transfer to his son the property of the lands, and much less when at the time of his death he was not a subject of H. M.

I still consider Dupont has less right to the lands he claims from Francisco Rovira, as the document he has presented is a deed of sale of the improvements and not of the lands, as it is evidenced by the deed itself, such sales of land having never been permitted, except in cases where the grantees had acquired a real title of property to them. And although formerly the transfer of such lands were allowed, it has lately been prohibited on account of the many abuses which became notable. The individual who acquired lands through a transfer was compelled to

comply with the conditions under which they had originally been granted, and which are as follows:

That all grantees have to cultivate the lands during ten consecutive years with the number of slaves corre'ponding to the quantity of acres that may have been granted to him—which proper sition was formerly fifty acres for each slave, but now only twenty-five acres; that they have to build a house and have to raise a certain number of head of cattle.

It is public'y and notoriously known that Mr. Gideon has never complied with either of these two conditions as he has never had any cattle, nor any slaves of his own, nor has he lived upon the said lands, nor has he ever cultivated them, as he has himself acknowledged before me.

By which it is clearly proven, not only that he has no right
688 to the lands which he claims, but also that the sale of the improvements is a false deed of sale, as no improvements ever existed upon that land until now that Robira has built a house.

By the proceedings and certification which I herewith transmit to y. e. it is proven that Dupont changed his residence in April of 1802, and that in November of the same year permission was given to his son to take away the negro slaves that had been retained here; since which date he had never returned to this province until last month. By the positive facts, added to the depositions of the witnesses presented by the Presbyter Crosby and by Don Francisco Robira, as well as by the confession of Dupont himself, it is evidenced that the lands of his father, as well as those transferred to him by Richardson Ryan, have not been under cultivation for two consecutive years, and consequently he must lose his rights upon them in accordance with article 9th of the Royal Decree.

These points being clearly understood, I shall now proceed to explain to y. e. the just reason on my part for refusing Dupont to be heard judicially as he had solicited.

First. Because only the subjects of H. M. have the right to claim lands; and not considering Dupont as such, I could not in justice hear him, not even extrajudicially. That Dupont must not and cannot be considered as a new settler it seems to me to be beyond doubt. Because, how can any individual be reputed as such, who, like many others, without having given any signs of a fixed and permanent residence, wander from one place to another like vagrants, and who when they reside in this province call themselves subjects of H. M., and when in the United States claim to be citizens of that country, and without being either one or the other they wish to enjoy the rights and privileges of both nations.

The King permits foreigners to become settlers in order to
689 improve the country; but it is evident that such vagabonds do not certainly contribute to it, much, on the contrary, like true lice they live out of the industrious settlers.

Second. Because the aforesaid royal decree provides that all matters concerning lands shall be decided by proper judicial proceedings and information, but without formality, noise, or clamor, which determination had no other object than to stop the ma'y law suits which originated to the injury and detriment of agriculture and population; because, for fear of such law suits, no one dared to claim the lands which for entire years

had remained uncultivated. Cases having already occur'ed when some Americans who had come with the intention of settling in this province returned to their country saying that although they had seen ma'y abandoned lands, they dared not ask for them because they had been informed that the said lands hade been granted to other parties, and they did not wish to have any disputes or law suits with anybody. However, they were encouraged and stimulated by the secretaryship to solicit those lands, but it was impossible to overcome their repugnance.

But the adoption of the aforesaid decision has already remedied this evil, and has encouraged many to ask for uncultivated lands. And at the same time it has quieted the uneasiness of the colonists who own lands which had been previously granted to other parties. Being now satisfied that even in the event of the latter claiming them, they would not be exposed to suffer the expenses and prejudices of a protracted law suit in order to determine the proper rights that each party may have upon the lands in dispute.

Third. Because other inhabitants have been dispossessed of the lands which they did not cultivate in the same manner as Dupont, without having availed them the excuse or pretext which is generally alleged by all of them, about the revolution of the year 1795, and the hostilities by the Indians. Consequently I have failed to find any foundation whatever why this Dupont should be made an exception. On the contrary, I consider his case worse than the others, because although those
690 others did not cultivate the lands which were taken back from them, they at least had cultivated other lands upon which they had located in good faith, with their families and their slaves, circumstances which do not concur in the case of Dupont; and which if listened to would prove a very prejudicial example, as others would also pretend to be heard judicially, basing their demands perhaps, upon causes more just than that of Dupont, thus throwing open again the door which it had endeavored to keep closed, on account of what I have exposed in my second reason.

Fourth. Although formerly all land questions were heard judicially, I always understood that the interest of the province, as a new-born colony, demanded the abolishment of such a practice, which was only useful to the notaries and entanglers, who, owing to the want of regular attorneys at law, would commence to write documents and defend the litigants, causing them considerable expense. How much better it is that such questions should be determined by the simple practice of judicial proceedings of information in order to ascertain if the party dispossessed ha complied with the conditions under which the land in question had been granted to them, or any other title or right that he might have upon the same.

I could not consider it just that such parties should be put to the alternative of either to abandon the land or suffer the troubles and expenses usually caused by litigation, particularly when their only fault was to have asked for lands which they had seen uncultivated, and which they naturally supposed were vacant or abandoned, they certainly not being obliged to know if they had been granted to other parties.

The claim of Dupont would not have appeared so strange to me if he should have proceeded truthfully and sincerely, but to make use of such

falsehoods as he does in his petitions, and to address them to me whom he should have supposed was well aware of the contrary, it
691 requires a man to be very ignorant, or else possessed of a daring audacity seldom seen. I shall only mention to y. e. the most important points, as otherwise it would embrace a volume.

In his first petition he alleges that upon his arrival in this city from the United States he found that Father Miguel Crosby had taken possession of his lands situated at Mantanzas, when it is notorious that the family of Dupont moved to the United States in April of 1802, which he only left in November of the same year. It is proven besides that the tract of land in question was not fenced in when Crosby took possession of it; that the houses were in ruins, and that the negro whom Dupont alleges to have left in charge of the place was not living upon it.

In his written statement number six he declares that Don Miguel Crosby and Don Francisco Robira had taken possession of his lands during his absence and that of his family in the United States, where they had gone for the purpose of settling certain matters. He does not say the truth when he says that he and his family had gone to the United States for the purpose mentioned, because it is demonstrated that he went there because of having changed his residence. I agree that he acted right in withdrawing when the Indians compelled him, but he should have returned and attended to the cultivation of his lands soon as the hostilities from those savages had ceased, as it was done by the other colonists who has sought refuge in this city and at the island of Amelia.

Of equal tenor is his allegation that when the Presbyter Crosby took possession of the lands he expelled from it the slaves belonging to his father. The same Dupont told me that there had never been on that tract of land more than one single negro slave; although he had given orders for a negro man and negro woman whom he had left in the city to go there, they had never done it. Besides, in September of the year 1802 peace was made with the Indians, and on the following November took away the negro slaves whom his father had left. Hence it is evident that the Presbyter Crosby, to whom the lands were granted only
692 in February of the following year, could not have banished the negro slaves from it.

Furthermore, I am informed that when Dupont left for the United States he left two old negro slaves and a mulatto in the city. That one of them died, and the other one went to live with a neighbor to take care of his cattle, while the mulatto woman was taken to the United States.

In his written allegations Dupont refers to the losses that his father sustained from the Indians, upon which he claims some reward. In regard to this I will say to y. e. that his father, as well as many others, are worthy of pity, but not Dupont himself, because of his having absented with his family at a time when the province was in danger, whose bad example others could have followed. But I had the satisfaction to see that no other inhabitant imitated him.

He also endeavors to allege some attention by saying that they had gone into the United States with my permission. But this permit was simply a passport which is given to all those who go out from the province. The passposrt I gave was to enable him to withdraw the negros

who had remained, detained because it was necessary that he should testify that they belonged to his father in order that I could permit him to take them into the United States.

Notwithstanding that Dupont was notified through the secretaryship to appear in order that he might be notified of the resolution devolved upon his petition, and of having returned to him the documents which he had presented, and of having been summoned by me in order to make him the same notification, nothing was sufficient to induce him to desist from presenting other petitions through the secretaryship, so that I was compelled to have them both arrested, being satisfied that authority is weakened if it is tolerated that the orders of the chiefs be resisted.

When y. e. reads the last petition of Dupont I have no doubt that you will at once understand the boldness in which it is written.
693 In it he alleges that he was under arrest because of his having insisted in being heard judicially. This is false, because his arrest was due to his having disobeyed my repeated resolutions.

During nine years that I have been in command of this province this is the first case that parties whom I have placed under arrest have asked that the cause of their arrest be published. Such a pretension, taking into consideration the circumstances of the person, can only be the outcome of a bold and profound ignorance.

In order that y. e. may know it, I shall mention you the name of the person, Bousquet. This young man, who is the son of the surgeon of the military hospital, went to the United States, where he learned the English language. He then went to Havana, where he got married, thus procuring the allowance granted by H. M. of four shillings per day to all the heads of family who locate there. Here it seems that he has selected another way of making money, and that is to formulate petitions for the new settlers and to defend them, and I believe that he does not fail to have his services well paid for.

As I detest this class of scribblers on account of the disorders which they cause, I have notified the said Bousquet that if he did not mend in the future I should order him out of the province. Among the other matters for which I recriminated Dupont was his having assured that the depositions of the witness had been taken under oath, and his saying afterwards that he had never asserted such a thing. When I charged him with his bad faith in the matter, he answered me that when the Presbyter Crosby had presented the documents to him, the witness had taken it for granted that everything was true. This incident confirmed my previous suspicions that Dup'nt was in the habit of signing his name without knowing the contents, and that this was the cause why he insisted in being heard, and not because of the reasons alleged.

Finally, in this cause, everything tending to a just determination
694 has been observed, otherwise it would be impossible to decide any question arising under the form of verbal judicial proceedings—a matter which does not occur in formal proceedings, because once the sentence has been pronounced the parties have the right to appeal to a superior judge.

It is true that in verbal proceedings there are no deliverances of documents to the opponent, nor any duplicates, replies, or proofs in writing, nor is an opportunity given for any new incidents or complications to

arise, and for this reason this class of proceedings are not adapted to those who live from the pen and who are opposed to the public utility and to the welfare of the province. The lands were granted anew because of the dispossession of the party who had failed to cultivate them during two consecutive years, and for no other cause whatsoever.

Witnesses are presented who usually are neighbors to the lands in question, and who can not state whether the lands had been cultivated or not. But in the present case there is another circumstance which does away with all doubt, and that is the very fact of the absence and change of residence of Dupont with his family and his slaves into the United States in the year 1802.

The petition of Dupont to allow him to go in company with the official notary to the house of a certain individual for the purpose of obtaining a certain document aroused my suspicion, and I did not consider it just that any such attempt should be made against a person, perhaps of respectability, withdrawing from him some document which might create discord, unless he declared to me the name of the person and the nature of the document. I acted wisely, because the document desired was a letter from the Presbyter Crosby to Don Francisco Pellicier, which contained some remarks against my general legal advisor. When I asked him afterwards for the said letter he replied that he had burnt it.

695 I have been rather lengthy because of my desire to give you a slight idea of the character of a large number of the inhabitants of this province whose differences and disagreements in regard to lands, frauds, and abuses against the royal treasury require a certain regulation, and for this purpose I herewith enclose you, marked number eight, the suggestions and means to be adopted to that end.

It is very important to remove all obstacles against agriculture by giving lands to all foreigners that may come, without exposing them to lawsuits, which are so discouraging. Also by preferring to have a fixed and permanent residence to those who have; if not, preventing them from returning to the United States without having accomplished their object; otherwise this province shall always be a colony of vagabonds, speculators, and American traders.

May God grant y. e., etc.,

ENRIQUE WHITE,
Gove'nor.

(Endorsed:) Defts.' Ex. 24. Furman vs. Mitchell. Filed in evidence, with translation attached, this 3rd March, 1897. Certain proceedings of Gov. White.

696 In the circuit court of Florida, fourth judicial circuit. St. Johns County.

CHARLES M. FURMAN, ALESTER G. FURMAN, AND Bolivar B. Furman
vs.
CATHERINE C. RUGGLES.

The clerk of said court will please issue summons ad respondendum, directed to all and singular the sheriffs of the State of Florida, command-

ing them to summon the said defendant to appear to answer the said plaintiffs in an action of ejectment.

The property sued for is described as follows, to wit: Lots 4, 5, & 6, of section 13, in township 9 south, range 30 east, containing 115.92 acres.

And the plaintiffs claim of the defendant $600 on account of mesne profits.

FLEMING & FLEMING,
BISBEE & RINEHART,
Plffs' Attys.

(Endorsed:) Circuit court, St. Johns County, Florida. Charles M. Furman et al. vs. Catherine C. Ruggles. Præcipe for summons and description of property sued for. Filed June 16th, 1896. David L. Dunham, clk. circ. ct. Fleming & Fleming and Bisbee & Rinehart, attorneys for plaintiffs.

697 In the circuit court of Florida, fourth judicial circuit, St. Johns County.

CHARLES M. FURMAN, ALESTER G. FURMAN, AND Bolivar B. Furman
vs.
WILLIAM D. WELCH.

The clerk of said court will please issue summons ad respondendum, directed to all and singular the sheriffs of the State of Florida, commanding them to summon the said defendant to appear to answer the said plaintiffs in an action of ejectment.

The property sued for is described as follows, to wit: Lots 1 & 2, of section 3, containing 96.13 acres, and lot 1, of section 4, containing 40 acres; all in township 8 south, of range 30 east.

And the plaintiffs claim of the defendant $500 on account of mesne profits.

FLEMING & FLEMING,
BISBEE & RINEHART,
Plffs' Attys.

(Endorsed:) Circuit court, St. Johns County, Florida. Charles M. Furman et al. vs. William D. Welch. Præcipe for summons and description of property sued for. Filed June 16th, 1896. David L. Dunham, clk. circ. ct. Fleming & Fleming and Bisbee & Rinehart, attorneys for plaintiffs.

698 In the circuit court of Florida, fourth judicial circuit, St. Johns County.

CHARLES M. FURMAN, ALESTER G. FURMAN, AND Bolivar B. Furman
vs.
FREDERICK H. SIMPSON.

The clerk of said court will please issue summons ad respondendum, directed to all and singular the sheriffs of the State of Florida, command-

ing them to summon the said defendant to appear to answer the said plaintiffs in an action of ejectment.

The property sued for is described as follows, to wit: Lot 8, of sec. 27, containing 40 acres, and east half of southeast quarter of section 28, containing 80 acres; all in Twn. 7 south, of range 30 east.

And the plaintiffs claim of the defendant $500 on account of mesne profits.

FLEMING & FLEMING,
BISBEE & RINEHART,
Pltfs' Attys.

(Endorsed:) Circuit court, St. Johns County, Florida. Charles M. Furman et al. vs. Frederick H. Simpson. Præcipe for summons and description of property sued for. Filed June 16th, 1896. David L. Dunham, clk. circ. ct. Fleming & Fleming and Bisbee & Rinehart, attorneys for plaintiffs.

699 In the circuit court of Florida, fourth judicial circuit, St. Johns County.

CHARLES M. FURMAN, ALESTER G. FURMAN, and Bolivar B. Furman,
vs.
HENRY M. STOKELY.

The clerk of said court will please issue a summons ad respondendum directed to all and singular the sheriffs of the State of Florida, commanding them to summon the said defendant to appear to answer the said plaintiffs in an action of ejectment.

The property sued for is described as follows, to wit: Lot 7 of section 21, in township 7 south, of range 30 east, containing 45.80 acres.

And the plaintiffs claim of the defendant $700 on account of mesne profits.

FLEMING & FLEMING and BISBEE & RINEHART,
Pltfs' Attys.

(Endorsed:) Circuit court, St. Johns County, Florida. C. M. Furman et al. vs. Henry M. Stokely. Præcipe for summons and description of property sued for. Filed June 16th, 1896. David L. Dunham, clk. ct. ct. Fleming & Fleming and Bisbee & Rinehart, attys. for plffs.

700 In the circuit court of Florida, fourth judicial circuit, St. Johns County.

CHARLES M. FURMAN, ALESTER G. FURMAN, and Bolivar B. Furman,
vs.
MICHAEL F. HARRINGTON.

The clerk of said court will please issue a summons ad respondendum directed to all and singular the sheriffs of the State of Florida, com-

manding them to summon the said defendant to appear to answer the said plaintiffs in an action of ejectment.

The property sued for is described as follows, to wit: Lot 3 of section 27, containing 40 acres, and south half of northeast quarter and the northwest quarter of southeast quarter of section 28, containing 120 acres; all in township 7 south, of range 30 east.

And the plaintiffs claim of the defendant $800 on account of mesne profits.

FLEMING & FLEMING and BISBEE & RINEHART,
Pl'ffs' Attys.

(Endorsed:) Circuit court, St. Johns County, Florida. C. M. Furman et al. vs. Michael F. Harrington. Praecipe for summons and description of property sued for. Filed June 16th, 1896. David L. Dunham, clk. ct. ct. Fleming & Fleming and Bisbee & Rinehart, attys. for plffs.

701 In the circuit court of Florida, fourth judicial circuit, St. Johns County.

CHARLES M. FURMAN, ALESTER G. FURMAN, and Bolivar B. Furman,
vs.
WILLIAM S. GENUNG.

The clerk of said court will please issue a summons ad respondendum directed to all and singular the sheriffs of the State of Florida, commanding them to summon the said defendant to appear to answer the said plaintiffs in an action of ejectment.

The property sued for is described as follows, to wit: The southeast quarter of the southeast quarter of section 33, containing 40 acres, & lots 9 & 10 of sec. 34, containing 108.50 acres; all in township 7 south, of range 30 east.

And the plaintiffs claim of the defendant $500 on account of mesne profits.

FLEMING & FLEMING and BISBEE & RINEHART,
Pl'ffs' Attys.

(Endorsed:) Circuit court, St. Johns County, Florida. C. M. Furman et al. vs. William S. Genung. Praecipe for summons and description of property sued for. Filed June 16th, 1896. David L. Dunham, clk. ct. ct. Fleming & Fleming and Bisbee & Rinehart, attys. for plffs.

702 STATE OF FLORIDA,
County of St. Johns:

I, D. L. Dunham, clerk of the circuit court for the fourth judicial circuit of the State of Florida, in and for the county of St. Johns, do hereby certify that the foregoing are true copies of the praecipes for summons ad respondendum filed in my office on the 16th day of June, 1896, in certain suits in ejectment, wherein Charles M. Furman, Alestor G. Furman, and Bolivar B. Furman are plaintiffs, and Catherine G. Ruggles, William

D. Welch, Frederick H. Simpson, Henry M. Stokeley, Michael F. Harrington, and William S Genung, respectively, are defendants.

In witness whereof I have hereunto set my hand and affixed my official seal at St. Augustine, Fla., on this the 25th day of March, A. D. 1897.

[SEAL.] D. L. DUNHAM,
Clerk Circuit Court St. Johns County, Florida.

(Endorsed:) Præs. suit in ejectment & monous fester. Filed in evidence May 12, 1897. H. H. Buckman, master. Defts. Ex. 26.

703 "D." 1886—96028. W. H. W. D. T. R. A. W. H. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 31st, 1887.

W. W. DEWHURST, Esq.,
St. Augustine, Fla.

Sir: In reply to the inquiries contained in your letter of the 20th of August last, I enclose herein a copy of office letter to the U. S. surveyor-general at Tallahassee, Florida, dated the 28th instant, relative to C. M. Furman's claim to Anastasia Island.

You will observe by the enclosed letter that it is the present intention of this office to settle the Furman claim; and in order to do so the surveyor-general has been called upon to learn who the present parties in interest are, and when found to give them an opportunity to file evidence to sustain the claim made by Furman to the lands in question.

Those now seeking patents for lands on said island, under the public-land laws of the United States, will have their applications considered as soon as it is finally determined whether these lands are private or public property.

Respectfully, WM. A. J. SPARK,
Commissioner.

(Endorsed:) Defts. Ex. 30. Letter from U. S. Land Comm. G. L. O. Filed in evidence this May 21, 1897. H. H. Buckman, master.

704 =31. Furman vs. Mitchel. Filed in evidence this May 21, 1897, marked "Defts. Ex. 31." H. H. Buckman, master.

FORM OF DEED REAL ESTATE AND TRANSLATION.

705 *Venta real.*

Dn. Juan Nepomuceno de Quesada, coronel de los reales exercitos, gobernador y commandante-general de esta ciudad y provincia de Sn. Agustin de la Florida por Su Magestad, digo: Que por la contaduria de real acienda de esta misma plaza se me pasó oficio en nueve de Octubre del año pasado de mil setecientos novénta, haciendo presente que por fallecimiento de Dn. José Fish, de nacion inglés, baxo de cuya relixion protestante murió y quedó una porcion de tierra cultivada titulada

el Bergel, y que un hijo de dicho difunto se habia retirado á los dominios de Su Magestad Britanica, y que las leyes de estos reynos prohibian tener propiedades de bienes raices á los estrangeros que no se hallen establecidos en nuestros dominios, solicitó dicho ministro que tanto la citada hacienda como cualesquiera otras que se hallasen en esta provincia y correspondia al enumerado Fish sus rentas y alquileres debian pertenecer á Su Magestad pidiendo me serviese tomar las providencias que tuviere por mas conveniente á efecto de la averiguacion de este asunto; en cuya virtud por auto de dicho més y año mande que
706 comprehendiendose en una de las resoluciones que indicaba el citado oficio de la contaduria en la ley treinta y cuatro del libro segundo, titulo treinta y dos, de las recopiladas de estos reynos para que se le diese cumplimiento á los citados bienes se compusase testimonio por el presente escribano de la disposicion testamentaria de Fish ó de otra bajo de la cual hubiese fallecido imformandose de sus albaceas ú otras personas de sus bienes, certificando ademas previniendose ante todas cosas á los rendatarios se entendiesen con la real administracion para los pagos que se debian hacer en inteligencia que no pareciendo lexitimos acrehedores habia de entrar el Rey, nuestro Señor, subsidiariamente á ponerlo todo; en esta atencion el presente escribano acompañando á la copia del testamento notificó de que los bienes de que tenia noticia haber quedado del insinuado Fish ademas de lo que contenia dicho testamento constanban de los testimonios de escrituras que produxo; en cuyo estado se presentaron los albaceas Dn. Thomas Travers y Dn. Juan Ledic, exponiendo los justos motivos que le habia impedido solicitar la imformacion de inventario y remitiendose en cuanto á los bienes de la indicada noticia que presentó el escribano pidieron por
707 un otro si, que siendo constante que muchos de los bienes eran de aquellos que serrando serravy non posunt y otros que eran las casas cada dia iban perdiendo de su merito por falta de reparos que se debia temer su total ruina dentro de poco tiempo con perjuicio de los acrehedores ó de Su Magestad me sirviese previa informacion de utilidad segun derecho mandar que todo se avaluasa se vendiese vitualmente para que el producto se impusiese ó depositase en caxas reales hasta las resultas; y por decreto de seis de Noviembre de dicho año de noventa mandé pasasen los maestros mayores de carpintero y albañil á formar el avaluo de las casas que se indicaban exponiendo además por diligencia jurada los que le parecie seu sobre la necesidad de venderlas y que con lo que dixese la contaduria que habia de intervenir en dichas diligencias se daria providencia. En cuya atencion se procedio á la tasasion y medida de las casas y solares, jurando en debida forma los dichos maestros de que en el estado en que se hallaban estas propiedades con amenaza de entera ruina era muy favorable la execucion de su venta pues de lo contrario se
708 hallaran expuestas á la perdida de su valor. Visto lo cual por la contaduria de Real Hacienda fué de dictamen se procediese á dicha venta, y por decreto de quince de Diciembre del referido año mandé se procediese al remate para cuyo fin se fixaron carteles en los parages publicos por el término de la ley y señalando el dia al remate, se executó esta á las puertas de estas casas de gobierno en forma de derecho y ofreciendose varias posturas pujas y sobre pujas á los citados bienes llegada la hora señalada para su conclusion quedó rematada á

favor, quedó concluido á favor de Dn. Mateo Guadarrama por la cantidad de cien pesos fuertes unas paredes de casas con su correspondiente solar situada en la calle que llaman de Sn. José con la cual linda por el oeste al sur solar del mismo Fish sin poseedor; al norte casa y solar que posee Angel Baquero y al este la orilla del mar, y no habiendo otro mayor postor que el contenido Dn. Mateo Guadarrama por la expresada cantidad de cien pesos fuertes aprové el remate á su favor, y por decreto de tres de Enero de este año mandé que los contenidos en la diligencia de remate depositase cada uno respectivamente las cantidades que les correspondia y en su virtud se presentó el citado Guadarrama cediendo
709 á favor de Bartolomé Sinta la propiedad indicada, cuya cesion le fué admitida y en su virtud verificó el excivo de dicha cantidad el citado Bartolomé Sinta segun consta de la carta de pago que ha producido formada por la real tesoreria de esta plaza con intervencion de la contaduria de Real Hacienda y un visto bueno, segun que todo mas largamente consta de los autos formados sobre el asumpto y oficio del infrascripto escribano; y para que el dcho. Bartolomé Sintas haya titulo lexitimo de la indicada propiedad otorgo por la presente en nombre de Su Magestad y de la real justicia que administro que doy y vendo en venta real de ahora para siempre al contenido Bartolomé Sintas y quien su causa y derecho representare, las paredes y solar arriba, deslindada y declarada libre de todo tributo ni hipoteca por precio de los indicados cien pesos que dió de plata fuerte y pagó y depositó en la real tesoreria de esta plaza segun biene dicho de que se le dió carta de pago siendo necesario se la doy de nuevo con renunciacion de leyes que conbengan y desde hoy en adelante desapodero desisto y aparto al dicho Dn. José Fish, sus herederos ú otros personas que á estos bienes adquieran derecho de
710 la accion y posecion, propiedad y señorio, título, voz y recurso y cualquiera otro derecho que á dichas paredes y solar havian y tenían y les pertenezcan pues todo lo cedo renuncio y traspaso en el dcho. comprador y en los que su dccho representare para que como suya propia las posea venda y enagene á su voluntad en virtud de esta escritura que á su favor otorgo con la qual pueda tomar y adquirir la posecion como mejor le convenga y para su mayor firmeza interpongo mi autoridad decreto judicial cuanto puedo y con dcho. devo convenir asi á la buena administracion de justicia, y otorgo la presente que firmo en esta ciudad de San Agustin de la Florida á diez y siete de Marzo de mil setecientos noventa y un años, siendo testigos el ayudante mayor de la plaza, Dn. José Fernandez, Dn. Manuel Rengil, y Dn. Santos Rodriguez, presentes, y lo firmó el Sor. otorgante, á quien yo, el infrascripto escribano, doy fé, conozco y tengo por gobernador y comandante general de esta plaza y provincia, por estar como tal exerciendo la administracion de la real justicia de ella, de que doy fé.

(Signo) JUAN NEPOMUCENO DE QUESADA.

Ante mi:

(Signo) DOMINGO RODRIGUEZ DE LEON,
Esno. de Gobierno.

711 *Real sale.*

Don Juan Nepomuceno de Quesada, col. of the royal armies, governor and commander in chief of this city of St. Augustine and Province

of Florida, by His Majesty, say': That on the ninth of October of last year, one thousand seven hundred and ninety, I received an official communication from the royal exchequer informing me that by the death of Don Jose Fish, of the British nation, under whose Protestant religion he died, there remained a quantity of cultivated land, called the Grove; that a son of the said deceased had retired to the Brita'nic Majesty, and that the laws of this Kingdom prohibited foreigners from holding real estate who are not settled in our dominions. The said minister of the royal exchequer solicited that the said estate, as well as any other property that might be found in this province appertaining to the said Fish, their incomes and rents, should resort to His Majesty, asking I would be pleased to take such measures as I might deem proper for the purpose of enquiring into the matter; wherefore, by a decree of the said month and year, I directed, it being provided in one of the resolutions referred to in the aforesaid communication of the royal exchequer, in law 34 of the 2nd book, title 32 of the Recopilacion of the Laws of the Kingdom, in compliance therewith, that the escrivanos should present an attested copy of Fish's testamentary disposition or of any other under what he may have died, informing himself of his executors or other purposes of his estate, certifying also and giving previous notice to the tenants that they must arrange with the royal exchequer the payments that were to be made, with the understanding that, no lawful creditors appearing, the King, our lord, would come in subsiding and possess the whole; wherefore the present escrivanas annexed to the copy of the testament, certified that the estate of which he had information had remained belonging to the said Fish, besides that embraced in the testament, con-
712 sisted of deeds which he produced, at which state of the proceedings the executor', Don Thomas Travers and Don John Leslie appeared, setting forth the just reasons that had prevented them from asking the institution of inventory proceedings, and referring, in respect to the estate, to the notice prevented by the escrivanos, stating that it being known that much of the property was of that kind which Servando, Servary, non posunt and other, that consisted of houses, were every day deteriorating in value for want of repairs, and that in short time their total sum was to be apprehended, to the injury of the creditors or of His Majesty; that after the necessary information I would, according to law, direct that the whole should be sold, and sold in order that the proceeds might be invested or deposited in the royal exchequer to wait the results. By a decree of the sixth of November of said year, I directed the master masons and carpenters to proceed to make the appraisement of the houses referred to, and say under oath their opinions as to the necessity of selling them, and with what the royal exchequer should say, who were interested in these proceedings, I would determine. Whereupon the measurement and appraisement of the houses and lot was proceeded to, the said appraisers, under due form of oath, said, that in the state in which this property was, threatening entire ruin, it would be very proper to effect a sale of it, otherwise it would be liable to lose its value; which, seen by the royal exchequer, they were of opinion that the sale should be proceeded with; and by a decree of the fifteenth of December of the same year I directed the sale to be effective, to which end notices were put up at the public places according to law, naming the

day of sale. This sale took place at the door of the government house, as directed by law, and their having many bids and our bids been made for the said property, and the hour for closing the sale having expired, the sale was closed. Don Mateo Guardarama purchasing, for
713 one hundred dollars, certain walls of a house with its corresponding lot situate in St. Jose street by which it is bounded on the west, on the south by an unsold lot of the said Fish, north by a house and lot in the possession of Angel Baquero, and east by the water's edge, and their being no higher bid made than that by Don Mateo Guadarama of one hundred dollars, I approved of the sale in his favor and *a* by a decree of the third of January of the present year I directed that those who had made purchases should each of them deposit the same by them, respectively. Whereupon the said Guadarama appeared and relinquished the property he had purchased in favor of Bartholome Sintas, who deposited the aforesaid sum, as will appear by the receipt which he produced, given him by the royal treasury of this city, with the intention of the royal exchequer and my approval, as will more fully appear by the proceedings instituted in the sale and the official communication of the escrivano, and that the said Bartholome Sintas may have his proper title to the said property. I declare by these presents in the name of His Majesty and of the royal justice which I administer, that I grant and really sell from this time and forever to the said Bartholome Sintas and to whom his rights may represent, the walls and lot herein described and declared, free from all charges and mortgages, for the aforesaid sum of one hundred dollars which he paid in cash and deposited in the royal treasury of this city, for which, as before stated, there was given to him a receipt; and it being necessary I renew it to him with a renunciation of the laws that may be necessary, and from this day henceforward and forever I direct and bar the said Don Jose Fish, his heirs, and all other persons of the right of property, possession, ownership, title, claim, and every other right which they had to said walls and lot or to them appertained, ceding it all and renouncing and transferring it to the said purchaser and to whom his rights represent, that as their own they
714 may possess, sell, and alienate the same at their pleasure by virtue of this deed which in his favor I executed, by which he can take and acquire the possession whenever it may suit him, and for its greater validity I interpose my authority and judicial decree as far as I can and in law ought to in the proper administration of justice; and I executed these presents, which I sign, in this city of St. Augustine, Florida, the seventeenth day of March, one thousand seven hundred and ninety-one. Witnessed by the adjutant-general of this city, Don Jose Hernandez, and Don Santos Rodriguez, who are present. And it was signed by the grantor whom I, the undersigned escrivano, attest that I know him to be the governor and commander in chief of this city and province, he being in the exercise of the administration of royal justice without it, to which I certify.

(Signed) JUAN NEPONUNCENO DE QUESADA.

Before me.

(Signed) DOMINGO RODRIGUEZ DE LEON,
Es. of the Gov.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.
10th June, 1845.

JOS. S. SANCHEZ,
Translator.

715 Circuit court of the United States, southern district of Florida.
In chancery.

CHARLES M. FURMAN ET AL.
vs.
H. L. MITCHELL ET AL.

Interrogatories to be propounded to the witness, Mary E. English, on behalf of the defendants in said cause.

First interrogatory. State your name, age, and residence.

Second interrogatory. Where were you born? Give State, city, and locality.

Third interrogatory. State what you know, of your own knowledge, as to the family history of Jesse Fish, son of Sarah Warner Fish, who resided at one time in the Provence of Florida, under Spanish dominion.

Fourth interrogatory. State what declarations, if any, have been made in your presence by any deceased person or persons who were related by blood or marriage with said Jesse Fish, relating to the pedigree of any person or persons claiming to be descendants of said Jesse Fish, son of Sarah Warner Fish, stating who made such declarations, the relation or connection of such declarations to said Jesse Fish, and what those declarations were.

Fifth interrogatory. State all you know about the death of Jesse Fish and the birth and death or whereabouts of any descendants from him.

Sixth interrogatory. State if you possess any written entry per-
716 taining to the pedigree of any persons claiming to be descendants of said Jesse Fish. If so, state fully the nature thereof and attach the same or an examined copy, duly proved, to your testimony.

Seventh interrogatory. State any facts, in your knowledge, and any admissions, by word or deed, made by Sarah Warner Fish, mother of Jesse Fish, which go to establish the pedigree of any persons claiming to be heirs of said Jesse Fish.

Eighth interrogatory. State whether or not said Jesse Fish brought up as his legitimate child or children, to the time of his death, any person or persons. If so, give their names and the full details evidencing such acknowledgment on the part of said Jesse Fish, and such child or children, or either.

Ninth interrogatory. State whether or not any persons took or received the name of Fish from said Jesse Fish; and if so, who, and what claim of relationship did such persons or person make to said Jesse Fish.

Tenth interrogatory. State any declarations or facts contemporaneous with the time at or about which said Jesse Fish lived, pertinent to the issue of the pedigree of the descendants of said Jesse Fish.

Eleventh interrogatory. Did you know one Gabriel W. Perpall, a resident of St. Augustine, Florida, about the year A. D. 1818 to 1825?

Twelfth interrogatory. Was Gabriel W. Perpall acquainted with your family?

Thirteenth interrogatory. Was Gabriel W. Perpall acquainted with the facts about which you have testified in the foregoing testimony given by you in answer to the several interrogatories above, or to the substance thereof, and did he possess such information prior to A. D. 1818?

717 Fourteenth interrogatory. There is of record in the public records of St. Johns County, Florida, a deed of conveyance from Gabriel W. Perpall to one Clarissa Fish and her children for a lot of land on the south side of St. Francis street, between the lots of Antonio Geraldo and Geronimo Alvarez. What relation to you was the Clarissa Fish named in this deed, and what connection had you with the lot of land above described?

Fifteenth interrogatory. State what, if anything, you know of a certain slave named Eva, whether you ever owned said slave, wholly or in part; and if so, how you acquired such ownership.

Sixteenth interrogatory. State any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of your examination or the matters in question in this cause. If yea, set forth the same fully and at length in your answer.

W. W. DEWHURST,
Solicitor for Defendants Mitchell et al.

Service of a copy of the foregoing interrogatories accepted this day of December, A. D. 1896.

(Endorsed:) Interrogatories propounded to Mary E. English, a witness for defendants. Filed Dec. 19, 1896. Louis Starke, dep. clerk.

718 In the circuit court of the United States for the southern district of Florida.

CHARLES M. FURMAN ET AL., COMPLAINANTS,
vs.
H. L. MITCHELL ET AL.

Objections to the interrogatories and cross-interrogatories to be propounded to defendant's witness, Mary E. English.

For general objection to all of the interrogatories to be propounded by the defendants to the witness, Mary E. English, and each and every of the same, complainants say it is not shown by the record in this cause that the defendant's claim by, through, or under any person or persons claiming to be the heirs or assignees of Jesse Fish, and that therefore the testimony sought to be elicited by said interrogatories is entirely immaterial and irrelevant to the issues in this cause, for the reason that if the testimony sought to be elicited tends to show anything, it is to show an outstanding title adverse to complainants' title, with which outstanding and adverse title defendants in no ways claim to be connected.

To the sixth interrogatory, the complainants further object on the ground that it calls for testimony which is incompetent and irrelevent, in

that it does not limit the supposed entry or entries concerning the pedigree referred to to entries made by persons which would render them admissible in this cause under the well-established rules of evidence pertaining to the introduction of evidence as to pedigree.

719 To the seventh interrogatory complainants further object, on the ground that it asks in part for oral testimony of the witness concerning supposed deed or writing, without having laid sufficient foundation for the introduction of secondary evidence as to such supposed deed or writing.

To the eighth interrogatory complainants further object on the ground that it is immaterial whether or not Jesse Fish brought up any child or children as his legitimate child or children, if in point of fact such child or children were not legitimate, for the reason that their capacity to inherit must depend upon the fact of legitimacy duly established. This is true both under the Spanish law and the law of this State.

To the ninth interrogatory complainants further object, on the ground that it is immaterial whether or not any person or persons took or received the name of Fish from said Jesse Fish, if in point of fact they were not his legitimate heir or heirs.

To the tenth interrogatory the complainants object on the ground that it asks generally for any declaration or facts contemporaneous with or about the time said Jesse Fish lived, without limiting the said interrogatory to facts or declarations or persons whose declarations would be material or relevant to the facts in issue.

To the fourteenth interrogatory complainants further object, on the ground that whether or not Gabriel W. Perpall made a deed to Clarissa Fish and her children are immaterial and irrelevant as to what relationship the witness bears to the supposed grantee, for the reason that it does not in any way tend to establish any legitimacy, or any claim by descent of any person or persons from Jesse Fish.

720 To the fifteenth interrogatory complainants further object, on the ground that whether or not the witness did or did not own the slave inquired about in said interrogatory is entirely immaterial and irrelevant to the issue in this cause, and does not tend to establish or contradict any fact in issue in this cause.

And the complainants further objecting to all of the said interrogatories to be propounded by the defendants to the said Mary E. English, and each and every of the same, say that they reserve the right to object to all the testimony of this witness if the answers to the interrogatories shall show that she claims to be the heir or one of the heirs of Jesse Fish. The ground of said objection is that it is not competent to prove the acts and declarations concerning pedigree by hearsay testimony by the person or persons claiming to be benefited by such acts or declarations.

Subject to the foregoing objections the following cross-interrogatories are propounded to the said Mary E. English: First cross-interrogatory. What is your age? Give the day and year of your birth, and state what your information is as to the date and place of your birth.

Second cross-interrogatory. What is your race? Are you a white or colored person; a negro or mulatto?

Third cross-interrogatory. Who was your mother? Give her name. Is she living or dead? If dead, when and where did she die? What was her age at the time of her death?

721 Fourth cross-interrogatory. Was not your mother a colored person—a negro or mulatto?

Fifth cross-interrogatory. Was your mother at any time a slave? If she was a slave, who was her owner or owners? Was she not at one time a slave of Jesse Fish?

Sixth cross-interrogatory. If you make any statement as to any descendents of Jesse Fish, state what knowledge or information you have that such persons are his descendants and your means of information in reference thereto. Were such alleged descendants white, colored, negroes or mulattoes, or persons having negro blood?

Seventh cross-interrogatory. If you state that Jesse Fish brought up any person or persons as his legitimate children, state how you know such fact and all your sources of information on the subject. Were not such persons negroes or mulattoes, or did they not have colored or negro blood?

Eighth cross-interrogatory. Is it not a fact that the woman by whom Jesse Fish begot issue, which issue, or the descendants of such issue, now claim to be the heirs of said Fish, is a negro or colored woman?

Ninth cross-interrogatory. If you make any statements as to admission by Sarah Warner Fish, mother of Jesse Fish, in reference to the pedigree of any persons claiming to be heirs of Jesse Fish, state fully whether or not such admissions were made to you or in your presence and everything that was said, and all the facts and circumstances connected therewith, and when and where such statements were made, and who were present at the time.

Tenth cross-interrogatory. If you state that Gabriel W. Perpall was acquainted with the facts about which you have testified, how do you know that? What is your information on the subject?

FLEMING & FLEMING,
BISBEE & RINEHART,
Solicitors for Complainants.

722 Circuit court of the United States, southern district of Florida.
In chancery.

CHARLES M. FURMAN ET AL.)
vs.)
H. L. MITCHELL ET AL.)

By virtue of a commission from the honorable the circuit court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Mary E. English, the witness in the said commission named, personally to come before me, who, being duly sworn true answer to make to all and singular the direct and cross interrogatories to said commission attached, deposes and answers as follows, to wit:

To the first interrogatory the said Mary E. English answers and says: My name is Mary E. English; age, eighty-nine years; residence, Key West, Florida.

To the second interrogatory she answers and says: I was born on

Fishers Island, near St. Augustine, in the State of Florida, on the 24th day of November, A. D. 1807.

To the third interrogatory she answers and says: My mother was the wife of Jesse Fish. Jesse Fish and family all resided under one roof at Fishers Island. There were eight children—seven girls and one boy.

To the fourth interrogatory she answers and says: Sarah Fish, mother of Jesse Fish, came to Fishers Island after the death of her son, remaining there several years and residing at the family residence with us. She said that she came there to see her son's children righted.

723 To the fifth interrogatory she answers and says: I know that Jesse Fish died from being struck by lightening. I was very young at the time. One of my sisters, Susan by name, I know died on Fishers Island and was buried there.

To the sixth interrogatory she answers and says: I have nothing in my possession.

To the seventh interrogatory she answers and says: Sarah Warner Fish divided the household effects of Jesse Fish, her son, after his death, among all the children who were leaving the homestead on Fishers Island and going to St. Augustine to live. Sarah Warner Fish remained on the island, but subsequently came to St. Augustine, where she died.

To the eighth interrogatory she answers and says: Jesse Fish brought up as his legitimate children up to the time of his death the following-named children, viz, Sofia, Elizabeth, Harriet, Diana, Mary, Phebe, Susan, and John. All were born on Fishers Island, and all resided under the same roof. All of the above named were recognized and acknowledged as his children.

To the ninth interrogatory she answers and says: No other person took the name of Fish except Clarissa Fish, wife of Jesse Fish and mother of the eight children above named.

To the tenth interrogatory she answers and says: I do not recollect any.

To the eleventh interrogatory she answers and says: I recollect Gabriel W. Perpall. I saw him a great many times. He came over to Fishers Island a great many times.

To the twelfth interrogatory she answers and says: He was.

To the thirteenth interrogatory she answers and says: I am satisfied that Gabriel W. Perpall was acquainted with the fact that Jesse
724 Fish and family lived on Fishers Island, and that we were the children of Jesse Fish.

To the fourteenth interrogatory she answers and says: Clarissa Fish, named in the aforesaid deed was my mother. The lot of land described was exchanged for a lot of land on Mata'zas Creek or river. The lot of land in St. Augustine was subsequently made our homestead where we all resided.

To the fifteenth interrogatory, she answers and says: When we were moving from the island, my grandmother, Sarah Fish, gave Eva, a slave, to us. Eva continued to live with us at St. Augustine until about the year 1845, when the said slave, Eva, was sold and the proceeds of the said sale were divided among all the surviving children.

To the sixteenth interrogatory she answers and says: I do not know of anything else that I could say that would be of benefit or be material to the subject of this examination.

To the first cross-interrogatory she answers and says: My age is eighty-nine years. I was born on the twenty-fourth day of November, A. D. 1807, on Fishers Island, near St. Augustine, in the State of Florida. My mother always told me that I was born there and then as above stated.

To the second cross-interrogatory she answers and says: I am a mulatto.

To the third cross-interrogatory she answers and says: Clarissa Fish, wife of Jesse Fish. She died years ago at St. Augustine. I do not recollect her age at the time of her death.

To the fourth cross-interrogatory she answers and says: My mother had a brown skin.

To the fifth cross-interrogatory she answers and says: Not that I know of. She was always free. She was never the slave of Jesse Fish.

725 To the sixth cross-interrogatory she answers and says: My mother told me that the persons whom I have herein mentioned by name as the children of Jesse Fish were his children. That they were all christened in the Catholic church at St. Augustine, and the fact appears in the records of the Spanish Cathedral at St. Augustine. They were mulattoes.

To the seventh cross-interrogatory she answers and says: We all lived together under one roof at Fisher' Island where we were born, and were recognized and acknowledged as his legitimate children. There were eight of us children—seven girls and one boy—all of whose names I have already stated. They had.

To the eighth cross-interrogatory she answers and says: She was.

To the ninth cross-interrogatory she answers and says: The statement made by me in the fourth direct interrogatory that Sarah Fish came to Fishers Island for the purpose of seeing her son's children righted, was not made to me individually, but to all of us, and was a matter of public knowledge. I do not know who else besides the family was present.

To the tenth cross-interrogatory she answers and says: Gabriel W. Perpall came over to visit us at Fishers Island with his family. Both families were well acquainted with each other.

MARY E. ENGLISH.
RAMON ALVAREZ.

Answered under oath and subscribed before me this 25th day of January, A. D. 1897.

[SEAL.] RAMON ALVAREZ, *Commissioner.*

(Endorsed:) Objections & cross-interrogatories to interrogatories to be propounded to witness, Mary English, and testimony taken by Comr. Alvarez. Filed Jan. 13, 1897. E. O. Locke, clerk.

726 Trustees of the Internal Improvement Fund to Charles F. Hopkins and Albert D. Rogero.

Know all men by these presents that the trustees of the Internal Improvement Fund, under an act of the general assembly of the State of Florida, entitled "An act to provide and encourage a liberal system of

internal improvements in this State," (approved January 6th, 1855), for and in consideration of the sum of fifty cents per acre, to them in hand paid by Charles F. Hopkins & Albert D. Rogero, of the county of St. Johns, State of Florida, have granted, bargained, and sold, and by these presents grant, bargain, sell, and convey unto the said Charles F. Hopkins & Albert D. Rogero and their heirs and assigns forever, the following-described lands to wit: The lot numbered six, of section twenty-nine, in township seven, south of range thirty east, containing seventy acres, and lying and being in the county of St. Johns, in said State of Florida, to have and to hold unto the said Charles F. Hopkins and Albert D. Rogero and their heirs and assigns forever, in fee simple.

In testimony whereof said trustees have hereto subscribed the' names and affixed the seals, and caused an impression of the seal of the "Florida State Land Office" to be made hereupon, at the capitol, in the city of Tallahassee, on this the 24th day of June, A. D. eighteen hundred and sixty-seven.

[SEAL OF FLA. STATE LAND OFFICE.]

DAVID S. WALKER, *Governor.* [SEAL.]
JOHN BEARD, *Comptroller.* [SEAL.]
J. H. BUEL, *Ad. Int. Treasurer.* [SEAL.]
J. B. GALBRAITH, *Atty. Gen'l.* [SEAL.]
HUGH A. CORLEY, *Register.* [SEAL.]

A true record entered July 12th, 1867.

FATIO DUNHAM, *Clerk, &c.*

727 STATE OF FLORIDA, *County of St. Johns:*

I, D. L. Dunham, clerk of the circuit court for the fourth judicial circuit of the State of Florida in and for the County of St. Johns, do certify that the foregoing is a true copy of a deed from trustees of the Internal Improvement Fund to Charles F. Hopkins and Albert D. Rogero, as the same is of record in my office in Book "R" of Deeds, at pages 26, 27.

In witness whereof I have hereunto set my hand and affixed my official seal on this the 13" day of May, A. D. 1897.

[SEAL.]

D. L. DUNHAM,
Clerk of Circuit Court.

(Endorsed:) Deed. I. I. Fund to Hopkins & Rogero. Filed in evidence this May 21", 1897. Marked "Def'ts' Ex. 33." H. H. Buckman, master.

728 Trustees of the Internal Improvement Fund to Albert D. Rogero.

Deed.

Know all men by these presents that the trustees of the Internal Improvement Fund, under an act of the general assembly of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvement in this State," approved January 6th, 1855, for and in consideration of the sum of fifty cents per acre, to them in hand paid by Albert D. Rogero, of the county of St. Johns, State of Florida, have granted, bargained, and sold, and do by these presents

grant, bargain, sell, and convey, unto the said Albert D. Rogero and his heirs and assigns forever the following-described lands, to-wit: The lots numbered two and three of section twenty-nine, in township seven south, of range thirty east, containing one hundred and forty-one 28/100 acres, and lying and being in the county of St. Johns, in said State of Florida, to have and to hold unto the said Albert D. Rogero and his heirs and assigns forever in fee simple.

In testimony whereof said trustees have hereto subscribed their names and affixed their seals, and have caused an impression of the seal of the "Florida State land office" be *be* made hereupon, at the capitol, in the city of Tallahassee, on this the 25th day of September, A. D. eighteen hundred and sixty-seven.

[50¢ STAMP 50¢]	DAVID S. WALKER, *Governor.*	[SEAL.]
[SEAL OF FLA. LAND	JOHN BEARD, *Comptroller.*	[SEAL.]
land OFFICE.]	JAMES H. BUEL, *Treasurer.*	[SEAL.]
	JNO. B. GALBRAITH, *Att'y Gen'l.*	[SEAL.]
	HUGH H. CORLEY, *Register.*	[SEAL.]

A true record entered Oct. 26th, 1867.

FATIO DUNHAM, *Clk.*

729 STATE OF FLORIDA, *County of St. Johns:*

I, D. L. Dunham, clerk of the circuit court for the fourth judicial circuit of the State of Florida in and for the County of St. Johns, do certify that the foregoing is a true copy of a deed from trustees of the Internal Improvement Fund to Albert D. Rogero, as the same is of record in my office in Book "R" of Deeds, at pages 131, 132.

In witness whereof I have hereunto set my hand and affixed my official seal on this the 13th day of May, A. D. 1897.

[SEAL.] D. L. DUNHAM,
Clerk Circuit Court.

(Endorsed:) Deed. I. I. Fund to Rogero. Filed in evidence this May 21", 1897. Marked "Def'ts' Ex. 34." H. H. Buckman, master.

730 Albert Rogero & wife to Alexander Magruder & William Logan.

Quitclaim deed.

This indenture, made this twenty-third day of October, A. D. one thousand eight hundred and sixty-seven, between Albert D. Rogero, of the city of St. Augustine, in the county of St. Johns and the State of Florida, of the first part, and Alexander Magruder and William Logan, of the same place, of the second part, witnesseth that for and in consideration of the sum of fifty dollars to him in hand paid at or before the ensealing of these presents, the receipt of which is hereby acknowledged, the said party of the first part has remised, released, and quitclaimed, and by these presents does remise, release, and quitclaim unto the said parties of the second part, and to their heirs, executors, administrators, and assigns forever, all that certain piece or parcel of land situate, being,

and lying in the county of St. Johns and State of Florida, and known, designated, and described as follows, to wit: Lot number three (3) of section twenty-nine (29) in township seven (7) south of range thirty east, being the same premises conveyed to the said party of the first part by the trustees of the internal improvement fund of the State of Florida by deed bearing date the 25th day of September, A. D. 1867, and recorded in liber "R," folios 131 and 132, of the records of St. Johns County, together with all and singular the tenements, hered'taments, and appurtenances thereunto belonging or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and also all the estate, right, title, and interest, property possession, claim, and demand whatsoever as well at law as in equity to the above-described premises and every part thereof, and the said party of the first part, for himself, his heirs, executors, and assigns, does covenant, promise, and agree to and with the said parties of the second part that he has not made, done, committed, or executed any act or acts, things or things, whatsoever
731 whereby or by means whereof the above-described premises or any part thereof now are or at any time hereafter shall or may impeached, charged, or incumbered.

In witness whereof the said party of the first part has hereunto set his hand and affixed his seal the day and year first above written.

ALBERT D. ROGERO. [SEAL.]

Signed, sealed, & delivered in presence of—
DANILE J. MICKLER,
G. E. LLAMBIAS,
Witness.

Know all men by these presents that I, Eulogia Rogero, wife of the said Albert Rogero, for and in consideration of the sum of one dollar, to me in hand paid by Alexander Magruder and William Logan, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever relinquish unto the said Alexander Magruder and William Logan all my dower and all my right of right and title of dower in and for the premises described in the foregoing deed, so that I, the said Rogero, shall not, nor any person for me, have any claim or demand in or to said premises, but shall therefrom by these presents be forever debarred and excluded.

In witness whereof I have hereunto set my hand and affixed my seal this 23d day of October, A. D. 1867.

EULOGIA ROGERO. [SEAL.]

Signed & sealed in presence of—
DANIEL J. MICKLER,
G. E. LLAMBIAS,
Witness.

STATE OF FLORIDA, *St. Johns County.*

On this 23d day of October, A. D. 1867, before me personally came Albert Rogero and Eulogia Rogero, his wife, to me known to be the persons named in and who executed the foregoing deed and relinquishment of dower, and acknowledged that they executed the same for the

purposes therein set forth, and the said Eulogia Rogero, upon an
732 examination separate and apart from her said husband, acknowl-
edged that she executed the foregoing relinquishment of dower freely and voluntarily and without any fear, constraint, or compulsion of or from her said husband.

In witness whereof I hereunto place my hand and seal this 23d day of October, A. D. 1867.

JNO. LOTT PHILIPS, [L. S.]
Justice of the Peace.

A true record, entered this 2d day of November, 1867.

FATIO DUNHAM, *Clk.*

STATE OF FLORIDA, *County of St. Johns.*

I, D. L. Dunham, clerk of the circuit court for the fourth judicial circuit of the State of Florida in and for the county of St. Johns, do certify that the foregoing is a true copy of a deed from Albert Rogero & wife to Alexander Magruder & William Logan, as the same is of record in my office in book "R" of deeds, at pages 142–145.

In witness whereof I have hereunto set my hand and affixed my official seal on this the 13th day of May, A. D. 1897.

[SEAL.] D. L. DUNHAM,
Clerk Circuit Court.

(Endorsed:) Deed Rogero to Magruder & Logan. Filed in evidence this May 21st, 1897, marked "Defts. Ex. 35." H. H. Buckman, master.

733 Charles F. Hopkins and wife, Albert D. Rogero and wife, to Alexander Magruder and William Logan.

Quitclaim deed.

This indenture, made this twenty-third day of October, A. D. one thousand eight hundred and sixty-seven, between Charles F. Hopkins and Albert Rogero, of the city of St. Augustine, in the county of St. Johns and State of Florida, of the first part, and Alexander Magruder and William Logan, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of fifty dollars, to them in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and quitclaimed, and by these presents do remise, release, and quitclaim, unto the said parties of the second part, and to their heirs and assigns forever, all that certain piece or tract of land situate and being in the county of St. Johns and State of Florida, and known and described as follows, to wit: Lot number six (6) of section twenty-nine (29), in township seven (7) south, of range thirty (30) east, being the same conveyed to said parties of the first part by the trustees of the Internal Improvement Fund of the State of Florida, by deed, date the twenty-fourth day of June, A. D. 1867, and recorded in liber "R," folios 26 and 27, of the public records of St. Johns County,

together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and also all the estate, right, title, and interest, property, possession, claim, and demand whatsoever, as well in law as in equity, to the above-described premises and every part thereof. And the said parties of the first part, for themselves, their heirs, executors, and assigns, do covenant, promise, and agree
734 to and with said parties of the second part, that they have not made, done, ecmmitted, or executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the abovementioned premises, or any part thereof, now are, or at any time hereafter shall or may be, impeached, charged, or incumbered. In witness whereof, we, the parties of the first part, have hereunto set our hands and affixed our seals, the day and year first above written.

CHAS. F. HOPKINS. [SEAL.]
ALBERT D. ROGERO. [SEAL.]

Signed, sealed, and delivered in the presence of—
DANIEL J. MICKLER,
G. E. LLAMBIAS,
Witness.

Know all men by these presents, that I, Fanny H. Hopkins, wife of said Charles F. Hopkins, and I, Eulogia Rogero, wife of said Albert Rogero, for and in consideration of one dollar, to each of us in hand paid by Alexander Magruder and William Logan, the receipt of which is hereby acknowledged, do each of us hereby remise, release, and forever relinquish unto the said Alexander Magruder and William Logan all of our dower, and each of us all our right and title of dower, in and to the premises described in the foregoing deed, so that I, the said Fanny H. Hopkins, and I, the said Eulogia Rogero, nor any other person or persons for us, or either of us, shall have any claim or demand in or on said premises, but shall therefrom be forever utterly debarred and excluded by these presents.

In witness whereof we have hereunto set our hands and affixed our seals this 23rd of October, A. D. 1867.

FANNY H. HOPKINS. [SEAL.]
EULOGIA ROGERO. [SEAL.]

Signed and sealed in presence of—
J. W. CAPON,
JNO. LOTT PHILIPS,
Witnesses to Fanny H. Hopkins.
DANIEL J. MICKLER,
G. E. LLAMBIAS,
Witnesses to Eulogia Rogero.

735 STATE OF FLORIDA, *St. Johns County:*

On this 23rd day of October, A. D. 1867, before me personally came Charles F. Hopkins and Fanny H. Hopkins, his wife, and Albert Rogero and Eulogia Rogero, his wife, to me well known to be the persons named in and who executed the foregoing deed of conveyance and

relinquishment of dower, and acknowledged that they executed the same for the purpose therein set forth, and the said Fanny H. Hopkins and the said Eulogia Rogero, upon an examination separate and apart from their said husbands, each for herself acknowledged that she executed the foregoing relinquishment of dower as her and their own free and voluntary act and deed, and without any fear, restraint, or compulsion of or from her said husband.

Witness my hand and seal the day and year above written.

JNO. LOTT PHILIPS, [SEAL.]
Justice of the Peace.

A true record, entered November 2nd, A. D. 1867.

FATIO DUNHAM, *Clerk, &c.*

STATE OF FLORIDA, *County of St. Johns:*

I, D. L. Dunham, clerk of the circuit court for the fourth judicial circuit of the State of Florida, in and for the county of St. Johns, do certify that the foregoing is a true copy of a deed from Charles F. Hopkins and wife, and Albert Rogero and wife, to Alexander Magruder and William Logan, as the same is of record in my office, in Book "R" of deeds, at pages 139–142.

In witness whereof I have hereunto set my hand and affixed my official seal on this the 13th day of May, A. D. 1897.

[SEAL.] D. L. DUNHAM,
Clerk Circuit Court.

(Endorsed:) Deed, Hopkins & Rogero to Nagruder & Logan. Filed in evidence this May 21st, 1897, marked "Defts. Ex. 36." H. H. Buckman, master.

736 State of Florida to W. J. Sanchez.

Deed.

To all whom these presents shall come—greeting: Whereas, at a sale of lands by James D. Tannehill, collector of revenue of the county of St. Johns, at public auction at St. Augustine, in the county of St. Johns, on the 6th day of June, in the year of our Lord one thousand eight hundred and seventy-two, for the nonpayment of the taxes levied and assessed thereon for the year one thousand eight hundred and s'venty-one, and which remains unpaid on the day of such sale, together with the costs and charges due therewith, the following described piece or parcel was sold to W. J. Sanchez, he being the best bidder therefor, to wit: Lot three, section twenty-nine, township seven, range thirty, containing sixty acres, assessed as the property of Mess'. Magruder and Logan, for the sum of four dollars and seventy-two cents. Also lot No. 3 (three), section thirty-two, township 7, range thirty, containing thirty-six acres, for the sum of three dollars and sixty-four cents, assessed as the property of Mess'. Magruder and Logan. Also lot No. six, section twenty-nine, township seven, range thirty, containing seventy-three acres, assessed as the property of Mess'. Magruder & Logan, for the sum of five dollars and thirty-

one cents, which said sums, making in all thirteen dollars & sixty-seven cents, was the whole amount of taxes due and unpaid on said tract of land for the year aforesaid, together with the interest and costs due thereon and the charges of such sale, and has been paid by the said W. J. Sanchez to the said James D. Tannehill, collector of revenue aforesaid.

Now, therefore, know all men by these presents, that the State of Florida, in consideration of the sum of money aforesaid and the premises, and in conformity with law hath, and doth hereby, give, grant, and convey the tracts of land above described, together with the hereditaments and appurtenances to the said W. J. Sanchez and to his heirs and assigns, to their sole use and benefit forever.

737 In testimony whereof , J. D. Stanbury, county clerk of St. Johns County, have executed this deed pursuant to and in virtue of the authority invested by law, and for and on behalf of said State; and have hereunto subscribed my name officially, and affixed the seal of the county court of said county of St. Johns at St. Augustine, in the said county of St. Johns, this twentieth day of July, in the year of our Lord one thousand eight hundred and seventy-five.

[C. C. SEAL.] J. D. STANBURY,
County Clerk.

Done in presence of—

ALONZO HERNANDEZ.
B. F. OLIVEROS.

Filed for record 20th July, 1875, & recorded 24th July, 1875.

J. D. STANBURY, C. C. C.
By B. F. OLIVEROS, D. C.

STATE OF FLORIDA, *County of St. Johns:*

I, D. L. Dunham, clerk of the circuit court for the fourth judicial circuit of the State of Florida, in and for the county of St. Johns, do certify that the foregoing is a true copy of a deed from State of Florida to W. J. Sanchez as the same is of record in my office in Book "V" of deeds at page 222.

In witness whereof I have hereunto set my hand and affixed my official seal on this the 13th day of May, A. D. 1897.

[SEAL.] D. L. DUNHAM,
Clerk Circuit Court.

(Endorsed:) Tax deed, State to W. J. Sanchez. Filed in evidence this May 21st, 1897. Marked "Defts. Ex. 37." H. H. Buckman, master.

737½ CIRCUIT COURT OF THE UNITED STATES,
Southern District of Florida.

I, Eugene O. Locke, clerk of said court, hereby certify that the fo going pages, numbered from one to seven hundred and thirty-seve inclusive (together with a chart, four maps, and part of a tract boo forwarded herewith and certified separately), constitute a true and co plete transcript of the record and proceedings in said court in the case Charles M. Furman et. al. vs. Henry L. Mitchell et al., as the sam appears of record and on file in said court.

In testimony whereof I hereunto set my hand and affix the se of said court at Jacksonville, in said district, this twenty-ninth day September, A. D. 1898.

[SEAL.] EUGENE O. LOCKE, *Clerk.*

737¾ In the Supreme Court of the United States.

HENRY L. MITCHELL, GOVERNOR, ET AL., APPELLANTS,
against
CHARLES M. FURMAN ET AL., APPELLEES.

Appeal from U. S. circuit court, southern district of Florida.

Part II. Pages 738–744.

738 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 4, 1896.

I, E. F. Bert, Acting Commissioner of the General Land Office, d hereby certify that the annexed transcript of so much of a t ok i this office as relates to sections 16, 17, 20, 21, 22, 27, 28, 29, 33, & 34, T. 7 S., R. 30 E., sections 3, 4, 9, 10, 15, 22, 26, 27, & 35, T. 8 S. R. 30 E., sections 2, 11, 12, 13, & 24, T. 9 S., R. 30 E., on Anastasi Island, Florida, is a true and literal exemplification of the origina thereof.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the da and year above written.

[SEAL.] E. F. BERT,
Act'g Commissioner of the General Land Office.

(Endorsed:) Defts. Exhibit 2. Furman vs. Mitchel. Filed in evidence Jan'y 19, 1897. H. H. Buckman, master. Transcript Land Office showing entries, &c.

FOLD OUT IS TOO LARGE TO BE FILMED

744¼ CIRCUIT COURT OF THE UNITED STATES,
Southern District of Florida:

I, Eugene O. Locke, clerk of said court, hereby certify that the attached chart, and pages numbered from 738 to 744, inclusive, constitute, together with 737 pages, already certified as Part I, and four maps or drawings, a true and complete transcript of the record and proceedings in said court in the case of Charles M. Furman et. al. vs. Henry L. Mitchell et al., as the same appears of record and on file in said court.

In testimony whereof I hereunto set my hand and affix the seal of said court at Jacksonville, in said district, this twenty-ninth day of September, A. D. 1898.

[SEAL.] EUGENE O. LOCKE, *Clerk.*

744½ In the Supreme Court of the United States.

HENRY L. MITCHELL, GOVERNOR, ET AL., APPELLANTS,
against
CHARLES M. FURMAN ET AL., APPELLEES.

Appeal from U. S. circuit court, southern district of Florida.

Part III. Pages 745–749.

744¾ DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 26 Nov., 1896.

I, E. F. Best, Acting Commissioner of the General Land Office, do certify that the annexed tracing of a plat of township 7 south, range 30 east, Tallahassee meridian, Florida, approved March 6, 1851, is a true and literal exemplification of the official plat of the survey thereof on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.] (Sgd.) E. F. BEST,
Acting Commissioner of the General Land Office.

(Here follow maps marked pp. 745, 746, 747, 748, & 749.)

750 CIRCUIT COURT OF THE UNITED STATES,
Southern District of Florida:

I, Eugene O. Locke, clerk of said court, do hereby certify that the attached pages, numbered 745, 746, 747, and 748 & 749, together with 737 pages already certified to as "Part I," and chart and pages numbered from 738 to 744, inclusive, certified as "Part II," constitute a true and complete transcript of the record and proceedings in said court in the case of Charles M. Furman et al. vs. Henry L. Mitchell, governor, et al., as the same appear of record and on file in said court.

In testimony whereof I hereunto set my hand and affix the seal of said court at Jacksonville, in said district, this twenty-ninth day of September, A. D. 1898.

[SEAL.] EUGENE O. LOCKE, *Clerk.*

751 (Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 3, 1898. Case No. 17189. S. Florida C. C. U. S. Term No. 604. Henry L. Mitchell, governor of the State of Florida, Wm. D. Bloxham, comptroller, &c., et al., appellants, vs. Charles M. Furman, as administrator of the estate of Charles M. Furman et al. Filed November 11th, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

HENRY L. MITCHELL, GOVERNOR OF the State of Florida, et al., as the board of trustees of the Internal-Improvement Fund of the State of Florida, et al., appellants,
v.
CHARLES M. FURMAN, ADMINISTRATOR, etc., et al., appellees.

No. 158.

BRIEF AND ARGUMENT FOR APPELLANTS.

STATEMENT OF THE CASE.

This case comes here on appeal from the interlocutory orders and final decree rendered by the circuit court of the United States for the southern district of Florida in chancery.

In October, A. D. 1895, Charles M. Furman, individually, and as administrator of Charles M. Furman, deceased, Bolivar B. Furman and Alester G. Furman, as heirs and holders under mesne conveyance from the heirs

of Charles M. Furman, deceased, filed their bill in equity against Henry L. Mitchell, governor of the State of Florida, and others holding the respective offices of comptroller, treasurer, attorney-general, and commissioner of agriculture of said State, and composing the board of trustees of the Internal-Improvement Fund of the State of Florida; The Florida Coast Line Canal Company; The St. Johns Railway Company; Horace S. Cummings, and John A. Henderson, alleging that complainants were the owners of Anastasia Island, containing 7,500 acres within townships 7, 8, and 9, range 30 east, except what was known in A. D. 1795 as the King's Quarries, "the boundaries of which were marked with stakes," containing about 200 acres "and lying on, and east of, the old King's Road, and between the same and the old lighthouse."

Complainants *darrain* title from one Jesse Fish, to whom they alleged the land was "granted" by the "Government" of Spain on the 19th day of June, A. D. 1795, and which grant they alleged was ratified and confirmed by the United States by the treaty of 1821.

Complainants averred that Fish was put in possession of the lands granted, and resided thereon from A. D. 1795 to his death, which, they allege, occurred in A. D. 1798; that until the present time claimants under Fish have occupied the Fish homestead on said island, and cultivated the fields thereon, and used the woodlands for fuel, and paid taxes on said property "when assessed for taxes," and exercised such acts of possession as the property was capable of, under claim of title.

That the United States, on the 18th of September, A. D. 1856, had patented to the State of Florida, under the act of September 28, 1850, about 1,500 acres of the lands on said island, and, in A. D. 1895, had patented to said State about 500 acres of said lands, under the act of June 9, 1880; and, in addition to the lands so patented, "said State has selected, under claims based upon the act aforesaid" (June 9, 1880), about 367 acres of said lands. The Canal Company, The St. Johns Railway Company, Horace S. Cummings, and John A. Henderson hold under deeds from the State of Florida.

That by act of the legislature approved January 6th, A. D. 1855, the State of Florida vested in the governor of the State, the comptroller, treasurer, attorney-general, and register of lands, and their successors in office as the board of trustees of the Internal Improvement Fund of the State of Florida, all lands granted by Congress under the act of September 28, 1850, with power of sale.

Complainants aver none of defendants to be in actual possession of any part of the lands in controversy; also that the cause involves the construction of the treaty between the United States and Spain, and arises under the same.

The bill prays that the patents, entries, and deeds under which defendants respectively claim title may be declared void as clouds on complainants' title, and for injunction and further relief.

The trustees and Cummings of the defendants appeared specially and moved to dismiss the bill for want of jurisdiction in the court to take cognizance.

The grounds of objection were on the 2d day of December, 1895, specified, and appear on page 11 of the record.

After argument the motion to dismiss was denied and defendants filed demurrers for want of equity and to the jurisdiction of the court (pp. 14 and 15 of record).

The demurrers were overruled, and separate answers were filed, the trustees and Cummings joining, and the railway and canal company making a joint answer (pp. 19 to 31 and 32 to 45 of the record).

A decree pro confesso was taken against the defendant John A. Henderson.

On July 27, 1896, the cause was referred to H. H. Buckman, esq., as special master, to take the evidence and report the same "with his findings of the law and facts," and on September 21, A. D. 1897, the master filed (1) his report of the testimony and findings (pp. 51 to 65 of record), and (2) his opinion (pp. 65 to 86 of record). Exceptions were filed to both the findings and opinion of the master, which, after argument, were overruled. The master's report was in all things confirmed, and on April 6, A. D. 1898, a final decree made granting the relief prayed in the bill, setting aside and declaring void the patents from the United States to the State of Florida (except as to 80 acres in section 28) and setting aside and declaring null and void the selections and entries of the State of Florida yet unpatented, as a cloud upon the title of complainants, and enjoining defendants and successors in office from taking possession of the lands described in the patents and deeds set aside, and decreeing that each party pay the costs incurred by them (pp. 98 to 100 of record).

From the orders made and decree rendered an appeal to this court was taken and allowed on the 6th day of July, A. D. 1898 (pp. 101 to 103 of record).

The defendants filed their assignment of errors as follows (pp. 103 to 106 of record):

(1) The court erred in denying the motion of defendants to dismiss the suit for want of jurisdiction and in taking jurisdiction of said cause.

(2) The court erred in overruling the demurrers of the defendants and requiring answers.

(3) The court erred in referring the whole cause, both questions of law and of fact, to the master without the consent of the parties.

(4) The court erred in confirming the report of the master in this, that the master in his reports of the testimony filed and made a part of his report admitted evidence over defendant's objection and refused to admit evidence offered by defendants, as follows:

(*a*) The master admitted over objection the testimony of Mr. Sanchez, in Exhibit G (p. 250 of record), to the question, "State the location of what was or is known as the quarries or King's quarries, on Anastasia Island."

(*b*) The master admitted over objection the petition of Sarah Fish, presented to the board of land commissioners, and copies of documents reported by said board to have been presented before them, and their report on said petition, taken from volume 4, American State Papers, pages 465–466, Duff Green's edition (pp. 125–126 of record).

(*c*) The master admitted over objection, Exhibit E, deed from Julia R. Furman, and Exhibit F, deed from

Irvine K. Furman (pp. 243 and 245, respectively, of record).

(*d*) The master admitted over objection, Exhibit L, the map of Hopkins. (Grounds of objection, p. 115 of record.)

(*e*) The master admitted over objection, Exhibit U, the certified copies of the original papers, purporting to be a concession to Jesse Fish of lands on Anastasia Island from the surveyor-general's office (pp. 265 to 278 of record).

(*f*) The master sustained exceptions to the testimony of the witness Rogero as to the location of the quarries (p. — of record).

(*g*) The master sustained exceptions to the testimony of the witness Dunham as to the handwriting in the county court docket and his evidence tending to prove said docket a record of the county court (p. 191 of record).

(*h*) The master sustained objections to the evidence offered of the list of Spanish governors, the period when incumbent, and the evidence that Quesada was appointed by the King (p. 197 of record).

(*i*) The master sustained objections to the admission in evidence of the law of Spain prohibiting the granting of islands to foreigners (pp. 197, 198 of record).

(*j*) The master sustained objections to the testimony of the witness Colee as follows: "The people have quarried stone ever since I was a boy; the public could cut stone on any part of Anastasia Island" (pp. 199 and 200 of record.)

(*k*) The master sustained objections to the testimony of the witness Colee that the Rodriguez grant on Anastasia

Island was occupied and built upon as a town settlement (p. 201 of record).

(*l*) The master sustained objections to the published reports of the register and receiver acting as a board of land commissioners (pp. 174, 175, 212–214 of record).

(*m*) The master sustained objections to the record from the General Land Office of the proceedings had before the Commissioner of the General Land Office, and on appeal before the Secretary of the Interior, in the case of Charles M. Furman, involving the claim of title to Anastasia Island (defendants' Exhibit No. 12, pp. 308 to 318 of record), and certified copies of the records from the General Land Office of proceedings relating to title to lands on Anastasia Island (defendants' exhibits 7 to 11, pp. 297 to 308 of record).

(*n*) The master sustained objections to the evidence offered that Sarah Fish died testate, and that her will was probated in St. Johns County, Fla. (pp. 151, 191, 206, 207, 216, 255, 291, 293 of record).

(*o*) The master sustained objections to the testimony offered by defendants that the published list of grants in east Florida, as published in the American State Papers, shows no other grant by Morales, and but two grants made by any other authority than the governor in person (p. 217 of record).

(*p*) The master sustained objections to the evidence offered by defendants that in the many sales by the Spanish Government of the property of Fish, sr., made at the time of the sale of the orange grove, the purchasers, except Jesse Fish, jr., took a deed to the several parcels of

property in absolute title, executed by the governor in the form set forth in Exhibit 31 (p. 218 of the record).

(*q*) The master sustained objections to the evidence offered by defendants that the originals of the title papers of Jesse Fish for lands on Anastasia Island, as they exist in the surveyor-general's office, is No. 17 of a bundle of one hundred loose unbound papers, marked "Memorials and concessions of land," and the same are mutilated and bear on their face marks casting doubt on their authenticity (pp. 216 and 223 of the record).

(*r*) The master sustained objections to the deed from the Spanish Government to Bartolome Sintas of lands bought at the judicial sale of property of Fish, sr., offered as evidence of the form of a royal title and of the form of the title in absolute property made to other purchasers save Fish, jr., who purchased at said sale (pp. 362–366 of record).

(*s*) The master sustained objections to the evidence from volume 5, American State Papers, pages 750 and 751 (Gales & Seaton's edition) of the direction of Governor Coppinger and Suavedra to furnish to the agent of the Duke of Alagon, the conditions under which the Spanish Government at different epochs granted land, and to furnish him an attested copy of each of the titles of proprietorship issued in each class, with the report made by the Spanish officials in compliance with such direction (p. 220 of record).

(5) The court erred in sustaining the findings of law and fact of the master over the exceptions thereto of the defendants Mitchell et al., the trustees, etc., numbered

from 1 to 42, inclusive, and printed on pages 86 to 91 of the record.

(6) The court erred in confirming the opinion and report of the master over the exceptions thereto of the defendants Mitchell et al., the trustees, etc., numbered from 1 to 65, inclusive, printed on pages 91 to 97 of the record.

(7) The court erred in making the decree dated the 6th day of April, A. D. 1898, and in decreeing the relief prayed in the bill, or any relief.

(8) The court erred in decreeing any relief against the State of Florida, the real defendant, sued through the trustees of the Internal Improvement Fund.

(9) The court erred in refusing to dismiss the bill at the hearing for the following reasons:

(*a*) Because by a correct construction of the treaty with Spain and the acts of Congress for the settlement of land claims in Florida, the statutes made by the United States barred the claim of complainants.

(*b*) Because the claim presented, if genuine, was made without authority.

(*c*) Because the grant, if genuine, was an inchoate grant.

(*d*) Because the concession presented was an undefined and unsegregated quantity of land, and the exception not established.

(*e*) Because no sufficient possession was proved.

(*f*) Because complainants proved title out of themselves.

(*g*) Because the evidence showed the claim had been determined adversely to the complainants in a tribunal

having jurisdiction of the subject-matter and parties at the request of complainants.

(10) The court erred in refusing to dismiss the bill at the hearing at the request of defendants.

NOTE.—Citations of Supreme Court Reports in parenthesis ( ) are from book and page of Lawyers' Cooperative Edition.

ARGUMENT.

The first assignment of error is the refusal to dismiss the bill for want of jurisdiction.

The grounds of the motion to dismiss for want of jurisdiction were by order of the court set forth by defendants (p. 11 of record).

The third, fifth, seventh, and eighth grounds there set forth will be considered.

The second paragraph of the bill states complainants' title as follows: "Your orators further show unto your honors that the said tract of land was *granted* by the Government of Spain to Jose or Joseph Fish * * * on or about the 19th day of June, A. D. 1795, which said *grant* was ratified and confirmed by the United States by the treaty with Spain," etc. It further appears from the bill that the lands claimed as a Spanish grant had been subdivided into sections and quarter sections by the public surveys. The bill set out each tract patented to the State "as described by the public surveys."

Under the rules of equity pleading that the nature of the conveyance under which the claim is made must be stated according to its legal effect, and that all pleadings are to be taken most strongly against the pleader (Story

Eq. Pl., sec., 37a, sec. 241), the averments of the bill amount to this, that an incomplete concession was made to Fish which the United States has refused to recognize.

The term "grant" comprehends concessions, and permissions to settle, whether evidenced by writing or parole.

Strother v. *Lucas*, 12 Peters, 436.
United States v. *Forbes*, 15 Pet., 183.
United States v. *Hanson*, 16 Pet., 200.

The survey of the lands according to the rules prescribed by the public-land laws, and the issuance of patents therefor, was prima facie, a determination by the United States that the concession made to Fish had not been recognized by the sovereign against whose rights the claim was sought to be enforced.

United States v. *Mitchell*, 9 Pet., 744.
United States v. *Repentigny*, 5 Wall., 208 (18–646).
McMiken v. *United States*, 97 U. S., 218.
United States v. *Hanson*, 16 Pet., 200–201.
Minter v. *Crommelin*, 18 How., 87 (15–279).

The court was required to take judicial notice that the public surveys were extended over these lands in 1834, if the bill had not set forth sufficiently what is the fact, that they had been surveyed as public lands, and not in the form prescribed for private grants.

The extension of the public surveys over the lands presupposes a determination in accordance with law that the lands are not private property.

Nofire v. *United States*, 164 U. S., 660.
Carpenter v. *Rannels*, 19 Wall., 146 (22–80).

It was a well-known historical fact that the United States acquired title to all the lands in Florida not

granted by the King of Spain, or his competent authorities in the name of the King, prior to the 24th of January, A. D. 1818, and that upon the transfer of the territory the duty devolved upon this Government as sovereign to determine between it and the private claimant which was the grantee from the common grantor.

United States v. *Arredondo*, 6 Pet., 736.
Treaty of February 22, 1819, article 2, article 8.
United States v. *King*, 7 How., 847.
United States v. *Forbes*, 15 Pet., 182.

It was equally a fact of which the court would take judicial notice that the United States had performed the duty imposed by the treaty and the law of nations, as also the manner of its performance, and that since the expiration of the several acts of Congress for the determination and settlement of private land claims in Florida this duty devolved upon the Commissioner of the General Land Office by law.

Constitution, article 4, sec. 3, par. 2.
Secs. 453 and 2447, Revised Statutes. Copp's Land Laws, 1882, vol. 1, pp. 64–68–69.
United States v. *Arredondo*, 6 Pet., 732.
Maguire v. *Tyler*, 75 U. S., 650 (19–320).
United States v. *Lawton*, 5 How., 28.
Knight v. *United States Land Company*, 142 U. S., 161 (35–985–6–8).
Carr v. *United States*, 98 U. S., 433.
Catholic Bishop v. *Gibbon*, 158 U. S., 155 (39–931–2–6).
United States v. *Marvin*, 3 How., 620.
Teschmaker v. *Thompson*, 79 Am. Decs., 157.

The bill avers a grant by Spain in 1795, ratified and confirmed by the treaty.

It has been repeatedly held by this court that complete grants were recognized by the treaty (article 2), and the incomplete grants or concessions ratified by the eighth article. "To this class of cases the eighth article of the treaty was understood to apply."

"These are the imperfect claims to which the eighth article of the treaty with Spain refers."

United States v. *Miranda*, 16 Pet., 159 (10–922).
United States v. *Wiggins*, 14 Pet., 350 (10–489).
United States v. *Mitchell*, 9 Pet., 734 (9–291).

It thus appearing upon the face of the bill that complainants were attempting to enforce an incomplete claim derived from a foreign government, which the United States had refused to recognize, the court should have dismissed the bill.

De La Croix v. *Chamberlain*, 12 Wheat., 599.
Menard v. *Massey*, 8 How., 306–7.
United States v. *King*, 3 How., 787.
Burgess v. *Grey*, 16 How., 62.

The averment of the bill was that the "grant" was confirmed by the treaty with Spain. That treaty confirmed all grants to the same extent (del mismo modo) that the same grants would be valid if Florida had continued under the dominion of the King of Spain.

Before the acts of Congress referring the question to the courts and authorizing suit against the Sovereign as owner of all the territory not granted prior to January 24, 1818, the extent that the several grants would have been valid if the King of Spain had continued in dominion was a mixed question of law and fact, determinable alone by the political department of the Government. From

May 23, 1828, to May 26, 1831, and from A. D. 1860 to A. D. 1875 (as to complete titles only) it was determinable by the courts, by favor of the Sovereign. The bill failed to aver a recognition of the alleged grant either by the political department of the Government or by the courts, and its averments disclosed the refusal of the Executive Department to give it recognition. The treaty giving the power and making it the duty of the United States to determine the extent to which this alleged grant was valid, and it appearing on the face of the bill that the United States had surveyed the lands as a part of the public domain, and issued patents therefor from time to time for more than thirty years, it was apparent that action by Congress was necessary to give validity to the claim; that the court was without power to grant the relief prayed upon the averments of the bill as to title, and consequently without jurisdiction, and the bill should have been dismissed upon motion. No standing in an ordinary judicial tribunal has ever been allowed to these claims until Congress has confirmed them. (*Menard's Heirs* v. *Massey*, 8 How., 307.)

The eighth ground for the motion to dismiss is that the claim as set out in the bill is barred by statute. The same objection was made by demurrer.

The statutes relied on by appellants are the act of May 23, 1828, and the act of May 26, 1830.

Act May 23, 1828. The first section confirms the Florida claims reported to Congress under its several acts beginning in 1822 to the extent of 1 league square. Section 2 restricts the confirmation to 1 league, and requires a relinquishment of all excess. Section 6 enacts

that *all* claims to land within the Territory of Florida, embraced by the treaty between Spain and the United States of February 22, 1819, which shall *not be finally settled under the foregoing sections*, of greater area than 1 league, not reported as forged, "shall be received and adjudicated by the judge of the superior court of the district (of Florida) within which the land lies," upon petition of claimant, with a proviso that no claim annulled by treaty or not presented to commissioners of the United States under the acts of Congress, shall be taken cognizance of by the courts.

The ninth section makes it the duty of the district attorney to report the cases in every case determined against the United States, and the duty of the Attorney-General to direct an appeal to be made to the Supreme Court in all cases decided against the United States, where the area exceeds 1 league square, and in all other cases if he deems the decision of the district judge erroneous.

The tenth section provides for a law agent to superintend the interests of the United States.

The twelfth section reads as follows:

> SEC. 12. *And be it further enacted*, That any claims to lands, tenements, or hereditaments *within the purview of this act*, which shall not be brought by petition before said court within one year from the passage of this act, or which, after being brought before said court, shall, on account of the neglect or delay of the claimant, not be prosecuted to a final decision within two years shall be forever barred, both at law and in equity; *and no other action at common law, or proceeding in equity shall ever thereafter be sustained in any court whatever.*

The act of May 26, 1830, is entitled, "An act to provide for the final settlement of land claims in Florida."

The fourth section of this act provides "that all the remaining claims which have been presented according to law, and not finally acted upon, shall be adjudicated and finally settled" upon the same conditions, restrictions, and limitations in every respect as prescribed in the act of May 23, 1828.

Complainants met this statutory bar with two contentions—first, the statute did not apply to complete titles, which theirs was claimed to be; second, if it did embrace complete titles, the act requiring adjudication by a court was unconstitutional.

Did the act of May 23, 1828, apply to complete titles? Where the language of a statute is clear there is no room for construction. *Thornley* v. *United States*, 113 U. S., 310 (28–1000).

The words of the act of 1828 are "all claims to land within the Territory of Florida embraced by the treaty between Spain and the United States" not finally settled by the preceding provision of the act.

Where the legislature makes no exception the courts can make none.

French v. *Spencer*, 21 How., 228 (16–97).
Yturbide v. *United States*, 22 How., 290 (16–342).

Language not as comprehensive in the California act was held to comprehend every species of title. *United States* v. *Fossatt*, 21 How., 446 (16–186).

The court had no power to restrict the terms of the statute.

Warton v. *Hunter's Lessee*, 1 Wheat., 326.
Delessus v. *United States*, 9 Pet., 135.

Bank of Alabama v. *Dalton*, 9 How., 529.
Saltmarsh v. *Tuthill*, 12 How., 389.
Board, etc., v. *Rollins*, 130 U. S., 662.

Had there been any uncertainty in the language used, a construction embracing grants of every nature was necessary to protect the interests of the United States in the newly acquired Territory of Florida, and this court, in case of doubt, was bound to give it such construction.

Slidell v. *Grandjean*, 111 U. S., 412, p. 439 (28–329).
United States v. *Fisher*, 2 Cranch., 386.

Contemporary history proves that complete titles were within the act of May 23, 1828.

On the 17th of September, 1830, Juan Percheman filed in the district court of Florida his petition for an adjudication on his claim to 2,000 acres of land granted by Governor Estrada. The petition was heard in the district court, and a decree made that the claim was within its jurisdiction, and by virtue of the act of May 26, 1830, it was confirmed. The United States appealed from the decree to this court, where the cause was heard and reported in 7 Peters, 51.

Mr. Joseph M. White was of counsel for the appellee. Mr. White had, prior to 1830, been one of the commissioners for ascertaining titles to land in Florida under the act of May 8, 1822; had also been the Florida Delegate in Congress at the date of the passage of the act of 1828, and chiefly instrumental in securing the long-delayed action by Congress upon the Florida land titles. Also, prior to the suit of Percheman, he had been appointed by the President the law agent authorized by the

tenth section of the act of 1828, and, after a visit to Spain, had compiled for the Government a complete collection of all the Spanish ordinances affecting land titles in Florida, which has been published in volume 5, American State Papers, pages 631 et seq. (Gales & Seaton's edition); also 2 White's Recompilacion, page 9 et seq.

No man was better advised regarding the purpose and intent of the act of 1828 than Mr. White. He was probably the author of the law. Vol. 5, Amer. State Papers, p. 351 (G. & S. ed.).

It will be remembered that the United States contended in the district court and on appeal that the court was without jurisdiction, and that the language of the grant by Estrada is, "I do grant him *in absolute property* the two thousand acres."

It will be found from the argument of Mr. White, printed in 7 Peters, that he brought directly before the court the question of jurisdiction under the acts of Congress, and also the power of Congress in the premises.

In this case the board of land commissioners had rejected the claim, and it was contended by the United States that this was a final determination. Mr. White contended that Congress had no power to create a tribunal to finally reject a claim confirmed by treaty *without an appeal to a court*. (7 Peters, p. 80.)

He contended further that this court had jurisdiction by the terms of the statute, which are "all the remaining claims which have been presented according to law and not finally acted upon shall be adjudicated," etc. (Sec. 4, act of May 26, 1830.)

The views of Mr. White as to the court's jurisdiction were sustained (pp. 86 to 95 of the published report, which will be referred to later in this brief); the purpose of the foregoing argument being to more clearly demonstrate the views of Mr. White because of the prominent part borne by him in the passage of the act of May 23, 1828. See Debates in Congress, Benton's Abridgment, vol. 10, p. 183; vol. 11, p. 68. See also Reports of the President to Congress; 2 White's Recompilacion, p. 9, p. 11, last paragraph; 5 Amer. State Papers, p. 631 (G. & S. ed.).

The act was so understood by the bench and bar.

If it had been unnecessary to present complete titles to the court for adjudication and settlement, how can we account for the owners of large grants held by complete title risking their property by a petition to the court for confirmation? Some of the ablest lawyers of the country went to Florida to engage in the lucrative practice created by the land laws; yet we find many cases involving thousands of acres of land held under complete titles presented to the court upon petition for confirmation, with full knowledge that if successful an appeal would be taken by the United States in all, embracing more than a league.

To impute to the contemporary profession a doubt of the necessity of presentation of this class of claims is to charge the most reckless disregard of property interests ever known in history.

Among the many complete or royal titles presented to the court and appealed, a few may be named as follows: Arredondo, 6 Pet., 691; Clark, 8 Pet., 436; Fleming, 8

Pet., 478; Mitchell, 9Pet., 716; Arredondo, 13 Pet., 68; Levy, 13 Pet., 81; Chairs, 10 Pet., 436; Hernandez, 10 Pet., 303; Wiggins, 14 Pet., 334; Buyk, 15 Pet., 216; Broward, 16 Pet., 143; Acosta, 1 How., 29; Delespine, 15 Pet., 226. See also argument of Richard K. Call, counsel for the United States, printed as Appendix No. 1, in Book 8, Lawyers' Cooperative Edition Supreme Court Reports, and also in volume 8, American State Papers, p. 288 (G. and S. ed.).

In the sixth paragraph of his argument, Mr. Call says: "The sixth section of the act of 1828 gives jurisdiction to the superior courts over all claims to land in Florida embraced by the treaty."

Mr. Call was acting governor of the Territory of Florida under General Jackson, and one of its ablest lawyers. From the vigor and force of his opposition to a confirmation of these and other large grants, even to taking issue with this court as to the power vested by law in the governor (see p. 252, vol. 8, American State Papers, G. and S. ed.), it can not be supposed that the interests of the Government would have been so far neglected as to have failed to raise the objection of want of jurisdiction in the court to hear and determine each of these large grants, which Mr. Call contended were of no validity.

From the high character, legal ability, and the positions occupied by both Mr. White and Mr. Call unusual force is given to the rule that in case of uncertainty the contemporaneous construction of a law by those called on to act under the law is entitled to great respect. (*Edwards* v. *Darby*, 12 Wheat., 207–210.)

But there never was any uncertainty in the meaning of the act of 1828. It has been many times construed by this court. With the indulgence of the court, for reasons of convenience in the use of other than the official edition of its reports, counsel will set forth at length citations from a number of cases construing this act.

In the Arredondo Case the court says:

> It was in the discretion of the legislature to select the cases to be submitted. * * * If we shall be of opinion that the title of the claimant was such as might have been perfected into complete title * * * or which were valid under the Spanish Government * * * in the words of the Florida laws * * * we can decree finally on the title. (*United States* v. *Arredondo*, 6 Peters, pp. 719-720.)
>
> The sixth section of the act of 1828 is still more comprehensive. It provides that all claims * * * shall be received and adjudicated by the judge of the superior court of the district. *This includes all claims.* This embraced all not before decided and not finally settled *with only two exceptions*, one as to quantity, the other as to date and forgery. The twelfth section of the Florida act finally bars at law and in equity *all claims* * * * *not brought by* petition before the court. (*United States* v. *Arredondo*, 6 Peters, p. 721.)

The grant to Arredondo was in absolute property and one of the two grants in East Florida made by a person other than the governor.

In the case of *United States* against *Clark* (8 Peters, 436), Chief Justice Marshall, delivering the opinion, says:

> It was obviously the intention of Congress to extend the jurisdiction of the court *to all existing claims* and to have them finally settled. * * * The

> words which confer and describe the cases on which it may be exercised are "all the remaining cases which have been presented according to law and not finally acted on." (*United States* v. *Clark*, 8 Peters, 445.)
>
> The grant which constitutes the foundation of the petitioner's claim is a complete title, subject to no condition whatever, emanating from the governor of East Florida, who was the lawful authority of His Catholic Majesty for making grants and concessions of land in that province. (Ibid., p. 467.)

It is worthy of notice that both the inchoate or first title and the complete title to Clark is printed in the report. Later in this brief the attention of the court will be called to the form of the first decree or grant, and that of the complete title as there exhibited, and a comparison made with the form of the alleged title to Fish.

In the case of *United States* v. *Percheman* (7 Peters, 51) the following is the language of the court:

> The sixth section of this act (1828) transfers to the court *all claims* which shall not be decided and finally settled under the foregoing provisions of this act * * * and declares they shall be received and adjudicated by the judge of the district court. * * * A proviso excepts from the jurisdiction of the court any claim annulled by the treaty * * * or any claim not presented * * * (p. 93). It (jurisdiction) is conferred, if at all, by the act of 26 May, 1830 (p. 86).

In the case of *Mitchel* v. *The United States* (9 Peters, 711) this court says:

> The acts of Congress submit these claims to our adjudication as a court of equity and, as often and

uniformly construed in its repeated decisions, confer the same jurisdiction over imperfect, inchoate, and inceptive titles as legal *and perfect ones*, and require us to decide by the same rules on *all* claims submitted to us, whether *legal* or equitable (p. 733).

That by the treaty with Spain the United States acquired no lands in Florida to which any person had lawfully obtained such a right by a *perfect* or inchoate title, that this court could consider it as property under the second article, or which had according to the stipulations of the eighth article been granted by the lawful authorities of the King (p. 734).

In the case of *United States* v. *Kingsley* (12 Peters, 476), on page 485, this court says:

Arredondo's grant confirmed by this court (6 Peters) was a clear case of a grant in fee. * * *

In *United States* v. *Wiggins* (14 Peters, 334) the court says:

It was adjudged by this court in the cases of Arredondo and Percheman (6 and 7 Peters) that the words "shall be ratified and confirmed," in reference to *perfect titles*, should be construed to mean are ratified and confirmed in the present tense. The object of the court in these cases was to exempt them from the operation of the eighth article, *for the reason that they were perfect titles* by the laws of Spain when the treaty was made. Percheman's had no condition in it, and the only difficulty involved was whether "it had been made by (the) proper authority" (p. 349).

On page 160 of *United States* v. *Meranda* (16 Peters, 153) the court uses this language: "Has uniformly been in contemplation of this court when it has confirmed Florida grants, inchoate or complete."

In *United States* v. *Delespine* (15 Peters, 226), on page 231, the court says: "This is a grant in absolute property;" and in *United States* v. *Fernandez* (10 Peters, 303), on page 305, "that (as to these lands within the Indian boundary) the grant of the governor severed them from the royal domain, so that they became private property, which was not ceded to the United States by the treaty with Spain;" and in the *case of Segui* (p. 306 of same report), "The grant was made by the governor in absolute property. * * * But we can not attach any condition to a grant of absolute property. * * * He (the governor) made the grant absolute."

Many other cases might be cited where the court has clearly disclosed that it recognized it was dealing with a complete title under the treaty, and declared its jurisdiction. But as if to set the matter at rest for all time, in the case of *Glenn* v. *The United States* (13 Howard, 250) Mr. Justice Catron, in delivering the opinion, expressly declared that the act of 1828 embraced complete titles. He says (p. 257):

> Arredondo's Case is relied on. * * * *That proceeding was founded on a perfect title.* * * * *It was brought before the courts according to the sixth section of the act of May 23, 1828,* WHICH EMBRACED PERFECT TITLES *and was only applicable to suits in Florida.*

How, in spite of this array of authorities, the court could for an instant have admitted complainant's contention that the act of 1828 applied only to inchoate titles is difficult to understand.

Counsel for appellees claimed to establish their contention in two ways: First, that the language used by the court in the case of *United States* v. *Wiggins* (14 Peters, 334) shows that complete titles are exempt from all the legislation of Congress relative to land claims in Florida; and, second, that the language of Chief Justice Marshall in *Fremont* v. *United States* (17 Howard, 542) shows that the courts had jurisdiction of incomplete titles only.

Answering this contention, as to the language in the Wiggins Case which is relied on, namely, "That perfect titles made by Spain before the 24th of January, 1818, within the ceded territory are intrinsically valid and exempt from the provisions of the eighth article is the established doctrine of this court, and that they need no sanction from the legislative or judicial departments of this country," we say: Language equally as broad has been used by this court relative to complete title under the Louisiana and California treaties, and yet under both those treaties it has been held that the acts of Congress required presentation and filing of complete titles and imposed a bar for failure.

McDonough v. *Millandon*, 3 How., 693.
United States v. *Powers Heirs*, 11 How., 570, p. 584.
Maguire v. *Tyler*, 8 Wall., 650.
Snyder v. *Sickles*, 98 U. S., 203 (25–98).
United States v. *Pellerin*, 13 How., 10.
Tameling v. *United States*, 93 U. S., 644 (23-1002).
Moore v. *Steinbach*, 127 U. S., 70 (32–55).
Boutiller v. *Dominguez*, 130 U. S., 238 (32–926).

Complete titles to land in all of the territory acquired by this Government have always been recognized, and deemed not to need legislative or judicial sanction.

Upon the second point the language used by Chief Justice Marshall is as follows (17 Howard, p. —, Bk. 15, co-op. ed, p. 244):

> In this respect it (the California act of March 3, 1851) differs from the act of 1824 under which the claims in Louisiana and Florida were decided. The jurisdiction of the court on *these cases* was confined to inchoate equitable titles, which required some act of the Government to vest in the party the legal title or full ownership. If he claimed to have obtained from either of the former Governments a full and perfect title he was left to assert it in the ordinary forms of law upon the documents under which he claimed. The court had no power to sanction or confirm it under the act of 1824 or the subsequent laws extending its provisions.

It is apparent upon reading the following text that the learned Chief Justice was discussing the act of 1824, under which the Louisiana claims were decided, and not the act of 1828, and that the word "Florida" was used with reference only to that provision of the act of 1828 which prescribed that the forms of procedure should be those directed in the act of May 26, 1824.

The language "obtained from either of the former Governments" makes it apparent he had the Louisiana territory in mind.

Chief Justice Marshall delivered the opinion in the *Clarke Case* (8 Peters, 436), and in that case he refers to

the act of 1824, and says: "It has already been stated that the act does not define the jurisdiction conferred on the court of East Florida by the act of 1830, but directs the mode of proceeding and the rules of decision. (*United States* v. *Clarke*, 8 Peters, 467.)

A few paragraphs further on in the Fremont Case the case of Arredondo is referred to as a grant in absolute title.

We are willing to submit the question upon the authorities upon the one side and the other, taking the direct and positive language in the numerous cases cited, especially the unequivocal declaration of Mr. Justice Catron (13 Howard, 257) on the one hand and the inferences from the Wiggins and Fremont cases on the other.

It may not be amiss to observe that Mr. Justice Catron delivered the opinion in the Wiggins Case, as also in the cases of Forbes, Hanson, Lawton, Low, Marvin, Villalobos, Acosta, Broward, and others, several of which were absolute titles, and also the opinion in *McDonough* v. *Millauden* (3 How., 693), in which more clearly than in any other case is stated the principles that complete titles in Louisiana stand recognized by the treaty of 1803 and required no confirmation by this Government (3 How., p. 706). In the Marvin and Lawton cases he declares the titles to be incipient titles, showing clearly that the learned justice did not overlook the fact that both complete and incomplete titles existed and were being adjudicated by the court.

A conclusive answer to the construction put by appellees upon the language of Chief Justice Marshall in the

Fremont Case is the fact that this court has in numerous cases refused to take jurisdiction of complete titles under the act of 1824, while under the act of 1828 very many of the cases determined are declared by the court to be perfect or absolute grants.

United States v. *Rosileus*, 15 How., 34–38.
United States v. *Powers Heirs*, 11 How., 580.

In the case last cited the court says:

> If we had found this to be a legal and perfect title then the rule laid down in the case of Reynes would apply, and compel us to dismiss the petition for want of jurisdiction, because the act of 1824 did not confer on the district courts power to decide on perfect grants.

It hardly seems possible that the able opposing counsel will, in the presence of this court, contend that the court would have retained and exercised jurisdiction in the many cases of absolute titles brought before it under the act of 1828, if, as they contend, not only was jurisdiction not granted by the act, but prohibited by constitutional principles and the enunciations of this court. It has heretofore been recognized that this court was careful not to exercise jurisdiction unless it clearly appeared to have been conferred by the legislative power.

The opinion in the Clarke Case is a plain and unequivocal answer to the strained construction placed on the language of Chief Justice Marshall by appellees.

In that case, delivering the opinion of this court, he says:

> The party who institutes suit (against the United States) must bring his case within the authority of

> some act of Congress, or the court can not exercise jurisdiction over it. * * * Here the counsel for the United States contends * * * that the court of the District had no jurisdiction. (*United States* v. *Clarke*, 8 Peters, 444.)

As before stated, this was a complete title in which the concession and royal title were set forth in the record and are printed at length in the statement of the case, yet the contention of want of jurisdiction made on behalf of the United States was not sustained. The Clarke Case is cited in *United States* v. *Santa Fe* (165 U.S., 714), upon the question of jurisdiction, and the court there briefly expresses the rule, which is elementary, and says, "Where, therefore, a tribunal of limited jurisdiction is created to determine such rights of property, a party seeking relief must present for adjudication a case clearly within the act."

So under the act of 1860 this court denied any jurisdiction of inchoate titles, and declared such cases must be dismissed whatever be their merit.

Scull v. *United States*, 98 U. S., 410 (25–165).

The fact is that the able counsel for the United States in the appeals in the Florida land cases urged the want of jurisdiction on every occasion, but it nowhere appears that any member of the profession contemporaneous with the law ever made it a ground of objection that the act of 1828 did not give the court jurisdiction to adjudicate upon complete titles.

One other contention of appellees was made which may not be omitted from notice.

Counsel for appellees argued that if by the act of 1828 it was the intent of Congress to require complete titles to undergo adjudication before a court, then the act was in contravention to the treaty with Spain and unconstitutional, and counsel cited many authorities upon constitutional law.

There is no constitutional objection to the law. As stated in the *Forbes Case* (15 Pet., 182) all the public domain of Spain was ceded to this Government and the title in fee vested in the United States. From the lands thus acquired was excepted individual property. It thus became the duty of this Government to provide a method for determining to the satisfaction of it, the owner of the vast body of the territory, what portions thereof had become private property. By the terms of the treaty this duty to determine the character of every grant was prescribed, since the United States agreed to maintain the King's grants to the same extent (del mismo modo) they would have been valid if the King had retained dominion. The debates in Congress and contemporary history show that there was a wide difference of opinion as to the method to be adopted, and that the measures provided in the act of 1828 were advisedly taken.

> See Debates in Congress, First Session, Twentieth Congress, Vol. 5, American State Papers, pp. 350-352, 474–477 (G. and S. ed.)

The measure finally agreed upon was eminently fair and needs no defense. It was infinitely more equitable than the act of February 28, 1809, relating to lands in the Mississipi territory. Briefly, it was this, a confirmation of all claims which had been approved by the

commissioners to the extent of 1 league square, the amount which Mr. Gallatin had reported as the limit of the jurisdiction of a Spanish official in Louisiana to grant, with leave to all persons whose interests were adversely affected, either by a rejection on the part of the commissioners or by the limit of area adopted by Congress, to present to a local court their title for adjudication with an appeal to this court; the United States submitting to appear in the court and to be bound by the decree made. By the act of 1827 Congress had submitted that as to all claims of 3,500 acres or less the report of the commissioners should be conclusive.

The nature of the titles issued in Florida made it necessary that the title papers for large grants should be examined in a court and pass judicial scrutiny. It was well known that for many years before the cession, anticipating the transfer of the territory, there had been extraordinary concessions of lands. It was further known from the experience of the titles derived under the Louisiana treaty, that there were not only complete titles, but concessions. Whether these grants had been made under authority of law by the "lawful authorities" (legitimas autoritades) of the King, it devolved upon this Government to ascertain. (*United States* v. *Perchman*, 7 Peters, 89). The political department of this Government has never acknowledged immunity from inquiry into the acts of foreign officials in matters of land titles. (*United States* v. *King*, 3 How., 786.)

On what principle is the power conceded to Congress to require claims recorded for examination by commissioners, and an equal power to require their presentation

to a court for examination of the evidences of title, denied?

The questions necessary to be determined in the inquiry imposed by the treaty upon the United States are well stated by this court in *United States* v. *Fossatt*, 21 How., 446 (16–187). See also *Lavergne* v. *Elkins*, 17 La., 220.

But appellees say that complete titles in Louisiana were not required to be presented to the courts. There was ample reason for such exemption in Louisiana which did not exist as to the province of Florida. The act of May 26, 1824, is framed on wholly different principles from the act of 1828. The act of 1824 is a mere consent on the part of the sovereign to try the issue of title with its subjects. The act begins with the words "it shall be lawful for any person claiming lands * * * which might have been perfected into a complete title * * * to present to the district court his petition." The act of March 27, 1804, for ascertaining and adjusting titles and claims to land in Louisiana was also entirely unlike the Florida acts for ascertaining claims and titles to lands. The fourth section of the Louisiana act explicitly exempted perfect titles from undergoing examination and investigation at the hands of the commissioners of this Government, yet this defect in the law was so apparent that before the admission of Louisiana as a State Congress required their presentation and record, under penalty of being barred as against the United States and its grantees.

Act March 10, 1812; act April 25, 1812.
United States v. *Power's Heirs*, 11 How., 585.

The language of the fourth section of the act of April 25, 1812, is peremptory like the language of the Florida acts and not permissive.

There can be no doubt as to the meaning of the Florida acts, beginning with 1822 and ending with the act of 1830. The language admits of but one construction: "That every person claiming title to lands under any patent, grant, concession, or order of survey * * * shall file" allows no exception of person or title. If the language were not plain the construction given the act by the commissioners would be a conclusive answer to the contention of appellees.

The fifth proposition of the proposed regulations submitted by Alexander Hamilton to his associates on the first board of commissioners was: "Fifth, that the commission determine whether they can inquire into the validity of the circumstances of a grant antecedent to the issuing of the royal title," etc. (Vol. 3, American State Papers, p. 763, G. and S. ed.)

See also letter of W. W. Blair, dated February 21, 1824. Ibid., p. 760.

There can be no question of the construction put on these acts by contemporary authorities. The very title of the memorial of Sarah Fish upon this alleged complete (?) title recognized the power of the board to adjudicate upon her claim. Where Congress, by confirming the reports of commissioners, has sanctioned the rules and principles on which they are founded, it is a legislative affirmance of the construction put by these tribu-

nals on the laws conferring the authority and prescribing the rules by which it shall be exercised. *United States* v. *Arredondo*, 8 Peters, 713 (8–555).

There are many reasons why all titles to lands in Florida were required to be presented to commissioners for record and to the court for adjudication. It would extend this brief too greatly to enter upon a discussion of the reasons, but the history of the times is replete with references to the subject. It is a well-known historical fact that the archives of West Florida were withheld from the United States; that those of East Florida had to be taken by force, and as stated by Alexander Hamilton "it was a subject of public notoriety that records had disappeared, and in one instance a grant of 16,000 acres discovered to have been introduced in place of another for less than as many hundred." See Report of Hamilton to Secretary of the Treasury. (Vol. 3, American State Papers, p. 766, G. and S. ed.)

The language of the California act (March 3, 1851) is less explicit than the Florida act, being general as to persons and titles. Yet in the very case on which appellees based their argument (*Fremont* v. *United States*, 17 How., 542) the learned Chief Justice uses these words: "It will be seen * * * the eighth section embraces not only inchoate or equitable titles but legal titles also, and requires them to undergo examination and be passed upon by the court." See also *Boutelle* v. *Dominguez*, 130 U. S., 238.

But say the appellees: "The Louisiana and California treaties were not self executory; the Florida treaty was." The report of the master, accepted and confirmed by the court, draws this distinction between the Florida treaty and the Louisiana and California treaties, and reports as a matter of law "that where the treaty acts directly it becomes the law of the land." That is a correct enunciation of the rule of law, but its application to the facts in this case does not support the contention of appellees, first, because even if the treaty acted directly as a confirmation of the grant to Fish there was a duty on this Government to determine to what extent such grant would have been valid if Florida had not been transferred from Spain; and second, even if by the terms of the treaty the several grants theretofore made, and alleged to have been made, had been exempted from examination, record, and survey, Congress by later acts directed their record examination and survey.

Congress may modify a treaty by later legislation. The legislation last of date will control, "provided always *the stipulation of the treaty* on the subject *is self-executing.*" In the words of the master, "acts directly."

Whitney v. *Robertson*, 124 U. S., 190 (31–388).
Ely v. *Robertson*, 112 U. S., 580 (28–804).

In the court below, appellees insisted it would be a confiscation of their lands, confirmed by treaty, if the court should construe the act of 1828 as barring this action. A sufficient answer would be that whatever hardship fell upon appellees was due to their own laches; but a further answer is that the court was to try the

cause as made by the bill. The bill rested the title wholly upon the grant by Spain, "ratified and confirmed by the United States by treaty." If the grant was a a complete grant, it received no confirmation by the terms of the treaty. What is confirmation? Confirmation is the conveyance of an estate that one hath in lands to another that hath the possession, whereby a voidable estate is made sure and unavoidable. When the United States extended the benefit of the treaty to not only those in possession of the lands but also to those in possession of title papers, what constitutional objection can be found to the requirement that all title papers should be submitted to judicial scrutiny and the imposition of a bar for failure to submit the evidence of title and possession, and have them established by proper evidence and record? Appellees argue that Congress could not prescribe that a title already vested should be devested by failure to prosecute it in the courts. But who is to determine whether or not any particular part of the territory is held by such a vested title until the title papers have been presented and examined; and why may not Congress require such examination in the courts and prescribe a bar for failure to present the claim within a reasonable time?

THE SECOND ERROR ASSIGNED.

The court erred in overruling the demurrers of the defendants and requiring an answer.

Appellants filed two demurrers to the bill—one for want of jurisdiction and one for want of equity. The

bar of the statute was set up in each and need not be further argued. Of the other grounds of demurrer this court is asked to consider the following:

(1) The bill disclosed that the matters sought to be determined were still pending before the Land Department of the United States. (2) The bill failed to aver that the claim had been recognized by the United States. (3) The bill showed the United States had determined the lands to be public lands, but failed to aver any fraud or mistake of law in such determination. (4) There appeared to have been no survey as a Spanish grant under the land laws. (5) The claim was barred by laches. (6) Want of possession sufficient to maintain suit to remove cloud on title. (7) A grant in excess of a league square, set out in the bill, and no averment that the excess over one league had been confirmed by Congress or the courts, and failure to aver that the lands in controversy were not within the excess over a league square of the alleged grant.

These several grounds of demurrer will be discussed very briefly, and then only lest they be deemed waived, because each ground of demurrer must necessarily be argued upon the evidence submitted.

The bill showed on its face the Land Department still exercising jurisdiction as to a part of the lands, and there was no averment of lack of jurisdiction, save only the conclusion of law that the United States had no title to the lands. Every adverse claimant, from the Duke of Alagon down to these claimants, might make the same

asseveration. Upon the averments of the bill the court had no jurisdiction.

Astcazaran v. *Santa Rita Land Company*, 148 U. S., 83 (37–377).
Knight v. *United Land Association*, 142 U. S., 161 (35–980).
Downs v. *Hubbard*, 123 U. S., 189, p. 213 (31–123).

The bill failed to aver that the claim had been recognized by the United States.

The bill failed to set out a presentation to the land commissioners for record, or a confirmation by Congress or a court. It was grounded upon the bare averment of a grant from Spain, ratified by treaty. The area claimed was greater than Congress had admitted within the power of a subdelegate of the King to grant. It was judicially known that all grants of land in Florida were required to be presented to the surveyor-general for survey, and to be confirmed by commissioners, Congress, or the court.

We contend the averments of the bill were not sufficient to give the court jurisdiction. See paragraph 5 of opinion of Judge Bronson in *Doe, ex dem. Clark*, v. *Braden*, 16 How., 640.

The bill showed the United States had determined the lands to be public lands, but failed to aver any fraud or mistake of law in such determination.

The facts showing that the United States had determined the lands to be public land were the survey and

patents set forth in the averments of the bill, under the statutes making it the duty of the United States and the Land Department to so determine. Upon such facts the bill should have averred a mistake of law, or fraud, to be maintained.

Catholic Bishop v. *Gibbon*, 158 U. S., 168 (39–936).

Shepley v. *Cowan*, 91 U. S., 330 (23–427).

There appeared to have been no survey as a Spanish grant under the land laws.

The bill set up a claim for 7,500 acres of land under a grant of 10,000 acres, being all of Anastasia Island, excepting therefrom the "King's Quarries." The description of the lands claimed set out their boundaries by sections and quarter-sections under the system adopted for public-land surveys, and not as any part of one section, the method adopted for the survey of private claims, thus showing on the face of the bill that the Land Department had determined the Spanish claim without validity.

THE CLAIM WAS BARRED BY LACHES.

The seventh section of the act of February 8, 1827, required the keeper of the archives to furnish the surveyor of public lands of Florida with a description of each claim to land confirmed, and made it the duty of such surveyor to survey such confirmed claims, while the twelfth section required holders of claims exceeding 3,500 acres to furnish the surveyor of public lands with information to enable him to exhibit the lands claimed

upon the township plats, and provided that the lands of claimants complying with these provisions be reserved from sale as public lands.

No averment is made in the bill that the claimants complied with the statutes in any respect, but it does appear that the claim was in excess of 3,500 acres; that the entire claim had been for more than forty years surveyed as public lands, and the bill averred a continuous patenting by the United States from the 18th of September, 1856, to the 8th of April, 1895, in subdivisions according to the public surveys. Surely there was apparent gross laches in failing to comply with the reasonable provisions of the statute.

WANT OF POSSESSION SUFFICIENT TO MAINTAIN SUIT TO REMOVE CLOUD ON TITLE.

The bill did not attempt to set up actual possession to any lands except the Fish homestead and a constructive possession of all else. As to the lands in controversy, it resolves itself to this: Complainants allege it is their land, but the United States have declared it is theirs by the official acts of survey and patent since A. D. 1834. A court of equity has no jurisdiction to settle these adverse rights, being legal and not equitable rights where neither party is in actual occupancy of the lands. *Frost* v. *Spitley*, 121 U. S., 552 (30–1010).

A grant in excess of a league square is set out in the bill, and no averment that the excess over 1 league had been confirmed by Congress or the courts, and a failure to aver that the lands in controversy were not within the excess over a league square of the alleged grant.

This statement of grounds of demurrer needs no extended argument. The court judicially knew that all grants of land in Florida in excess of a league square were refused recognition by the legislative department of this Government, except they had been specially confirmed by act of Congress or the title papers had been examined and the claim adjudicated by a court. Such recognition or confirmation, as the case might be, was a necessary averment.

Further, by an act of Congress all in excess of 1 league square of grants reported favorably by the commissioners and confirmed by Congress was directed to be sold as other public lands, non constat from the averments of the bill that the lands in controversy were not within the excess over 1 league square, the limit recognized by this Government as having validity by force of the grant from the subdelegate of the King of Spain. As to individual rights derived from a foreign government, this court is governed by the determination of the political department of its own Government.

United States v. *Arredondo*, 6 Pet., 718, 719, 735.
Jackson v. *Waters*, 12 John., 365; 4 John., 163.
Bouteller v. *Dominguez*, 130 U. S., 238 (32–926).
Head Right Cases, 112 U. S., 580 (28–803, 804).
Ping v. *United States*, 130 U. S., 581 (32–1068).

Upon the averments of the bill and the law applicable thereto, it was apparent that the court was without jurisdiction and the bill should have been dismissed upon demurrer.

THIRD ERROR ASSIGNED.

The court erred in referring the whole cause, both questions of law and of fact, to the master without the consent of the parties.

The solicitor for the trustees of the Internal Improvement Fund never consented to the appointment of a master with directions to return his opinion upon the law and facts. Whether he has waived his rights or whether such waiver short of a consent that the master should be appointed a referee entered as a rule of court, would give power to the judge to make the order complained of, is submitted upon the record to this court.

The solicitor for the trustees contends that a court of equity has no power to turn over to a master the determination of matters put in issue by the pleadings. This would give all judges power to appoint assistants, and while it would relieve the judges, would destroy the foundation principle on which our judiciary system is based. No more forcible illustration of the evils of such practice could be produced than the case at bar. Many of the questions to be determined were obscured by the long lapse of time since such questions had been before the courts; others involved laws and regulations of a foreign government, others practice in land matters, and the application of our own laws and decisions. The questions of law were numerous, and questions of fact were disputed.

It appears by the record that the master has accompanied his opinion with an extended argument upon the law, so that instead of having only opposing counsel to

contend against, by this method of reference one party has also to contend against the court, for the master represents the court and upon principle has the ear of the judge.

In the case at bar there were many objections to the report and opinion filed by the master, necessarily taken, so that it became impossible to overcome the general impression created in its favor as the opinion of one who had examined into the controverted matters of law.

It was natural that the judge should give weight to the report of the master, and it is quite probable that the condition of the business of the court was such that he felt he was not required to investigate and examine into the matters of law which the master reported upon as examined by him, and in making his ruling upon the master's report that he gave the benefit of any doubts to the party in whose favor the master reported.

Appellants contend a master's duties end with the taking and reporting of the testimony (*Kimberly* v. *Arms*, 129 U. S., 512–513).

FOURTH ERROR ASSIGNED.

The court erred in confirming the report of the master, in this, that the master, in his report of the testimony filed and made a part of his report, admitted evidence over the defendants' objection and refused to admit evidence offered by defendants, as specifically set forth in said assignment.

(*a*) The master admitted over objection Mr. Sanchez's testimony in answer to the question "State the location

of what is known as the quarries, or King's quarries, on Anastasia Island" (p. 250 of the Record). The objection was well taken. If the quarries were any parcel of land segregated from the mass of public lands, or segregated as public lands from the remainder as a Spanish grant, it was by an official approved survey. The bill avers a grant, except what was known at the time of the Spanish grant to Fish as the King's quarries. No attempt was made to show that Mr. Sanchez had any knowledge of the location of what was known in 1795 as the King's quarries, or that there was any such quarry, or were such quarries at that date.

(*b*) The master admitted over objections the copies printed on pages 465 to 471, American State Papers, Vol. 4, Duff Green's Edition. (pp. 125 to 141 of Record.)

The petition of Sarah Fish and the report of the action taken by the board were objected to on the ground that the bill had no averment on which to make such evidence relevant. The bill was drawn to found title on the grant as confirmed by treaty ignoring all statutory requirements of presentation, record, and confirmation. There was nothing in the pleadings on which to found this evidence.

2 Danl. Ch. Pr. (1st ed.), 410–411.
3 Green. Ev. (14th ed.), 355.
Harris v. *Nixon*, 9 Pet., 483.
Crochet v. *Lee*, 7 Wheat., 522.
Nash v. *Towne*, 5 Wall., 689.

As to all else besides the petition and report of the commissioners appellants objected because the publication in the American State Papers were but printed copies of copies the execution of the originals of which were not proved before the board, and no proof was made before the board of the genuineness of any of the papers, and because the originals were the best evidence. See objections, page 111 of Record.

The special attention of the court is called to this objection for the reason that in the practice in Florida it has become the accepted doctrine that the American State Papers are evidence in the sense that everything printed therein is evidence.

Appellants contend that the *reports* made by the board of land commissioners of their action in any case, or of any action had before them, is evidence equal to the original report filed by the board, but that the printed copies of translations, or of original papers filed with the board are not competent evidence of the proper execution and genuineness of such documents, and that such printed copies are not made evidence by their publication in the volumes of State Papers. In this Fish Case it appears that the board did not have the originals before it. (Vol. 4, p. 470, American State Papers, Duff Green ed.)

The doctrine enunciated by this court in *Bryan* v. *Forsyth* (19 How., 334) and *Watkins* v. *Holman* (16 Peters, 25) has been misapplied. In both cases the language of the court has application to the printed reports only and not to copies of documents reported as acted upon. In the case from 16 Peters, on page 56, the court says, "This

publication does not make that evidence which intrinsically is not so."

2 Philips's Evidence, 436–437.
Ratcliff v. *U. S. Ins. Co.*, 7 John, 38–51.
United States v. *Delespine*, 12 Peters, 654–656.
McDonough v. *Millaudon* (La. p), cited in 3 How., 700.

The presentation of these printed copies of copies raises a presumption that the originals would be adverse. After the objections to the competency of the extracts from the American State Papers were overruled, appellants further objected on the following grounds: (1) That on their face they were evidence of an inchoate title; (2) the alleged grant was not made by the lawful authorities of the King of Spain; (4) it was a concession on condition; (5) it appeared not to be in conformity to the practice under Spain as to execution or location and quantity of land; (6) the alleged grant was not accompanied with any survey or segregation from the public domain; (7) being a concession it conveyed no title descendible under Spanish law; (8) it appeared from the proceedings that the petition of Fish had been rejected by the lawful authorities of Spain (p. 112 of Record).

Every one of the grounds of objection was well taken. As every point will have to be argued upon the evidence, discussion of the above-enumerated grounds is postponed until the fifth and sixth assignments of error are argued.

(*c*) The admission of the deeds from Julia R. Furman and Irvine K. Furman, complainants, Exhibits E and F, was objected to on the ground that at the date of said deeds the United States was in the adverse possession of the lands attempted to be conveyed (pp. 243 and 245 of Record).

(*d*) Appellants objected to complainants' Exhibit U, the copies of the original title papers to Fish from the surveyor-general's office. The objections taken were that these title papers were not in rebuttal, but confirmatory of the testimony respecting their character (see p. 221 of Record); that by the evidence before the master and by the customs in force under Spain, of which the court would take judicial notice, it was conclusively proved by their form and their being loose sheets that the documents were but the first title papers, and were, if genuine, no more than a concession needing a survey and confirmation by the governor before they were evidence of title; that they were mutilated in a manner and at places conclusively fatal to their genuineness; that they were without file mark or other evidence to establish their genuine character; that no proof of the execution of the originals had been offered; that the signature of the governor of the province did not appear after the mutilated sheets; that the party offering the documents had proved no power in Morales to make a concession of land, much less a title in fee, and had failed wholly to show that Morales exercised any office under Spain save only by the very papers offered in evidence.

There can be no question that if the papers are genuine they are but the first title papers.

Doe v. *Latimer*, 2 Fla., 71.
Parvis v. *Harmanson*, 4 La. An., 421.
Flertas v. *Mayor et al.*, 1 Martin, N. S., 431.
Lobdell v. *Clark*, 4 A. (La.), 79.

Judge Douglass, who delivered the opinion in the case in 2d Florida referred to, was for many years United States attorney while the Spanish titles were being adjudicated under the act of 1828.

However, the mutilations pointed out rendered the papers inadmissible without proof of their execution, so that as ancient documents they were not admissible without proof of execution.

1 Phillips on Ev., 4 Am. Ed. (Cowan & Hill's Notes), 177, also p. 602.
1 Stark Ev., 532.

The title papers were based upon the presumption that Morales was the subdelegate of the King. If so, this was matter of record, and the papers were not admissible, however ancient, without proof from the records of the authority to execute them.

Jackson v. *Roberts' extrs.*, 11 Wend., 425.
Tolman v. *Emerson*, 4 Pick., 160.
1 Phillips on Ev., 4 Am. Ed. Note, 180.
2 Phillips on Ev., 472.
1 Green Ev., sec. 144.

(*c*) The master improperly rejected the evidence of Dunham, county clerk (p. 191 of record).

Dunham, as clerk of the circuit court, had made and certified copies from a book in his office which purported

to be a minute book of the old county court of Saint Johns County. These certified copies had been rejected on the ground that the county judge, as the successor to the judge of the county court, was the proper custodian of the record. The witness, Dunham, was called and brought the original docket, and testified that it was in the handwriting of one P. B. Dumas, former clerk of the county court, that it contained records of the trials of civil causes in the county court, and also proceedings of the probate court, and that the paper certified by him had been examined, and as a witness he proved them as an examined copy of the original minutes before him in the county court docket, entered as of date July 27, 1841. Appellants contend they proved the docket to be a court record of the former county court of Saint Johns County, and proved the contents of their Exhibit No. 1 as an examined copy. This evidence is argued later in this brief, upon the point that the certified copy was evidence.

(*f*) The master refused to admit in evidence the list of Spanish governors of Florida, and the periods of incumbency, as irrelevant. The master's ruling was based upon the assumption that it did not matter who was governer, that Morales was acting governor; but of that there is no proof outside of the title papers themselves.

(*g*) The law of Spain forbidding the granting of islands to foreigners was rejected as irrevelant. Irrelevant it could not be. Immaterial it may be, as the court will take judicial notice thereof.

(*h*) The testimony of the witness Colee (pp. 199-200 of the record) was ruled out as irrelevant. That testimony was that the public had quarried stone on any part of the island ever since he was a boy, as upon public land. This was evidence upon the very issue before the court, whether these lands had been occupied and claimed as private, or had been treated as public domain.

(*i*) The extracts from the reports of the register and receiver, acting as commissioners (pp. 212 to 214, and 174, 175 of record), were, we contend, material and important evidence, and should have been received by the master, and his finding should have conformed therewith.

(*l*) The master ruled out as irrelevant all the records from the General Land Office pertaining to the title of lands on Anastasia Island, appellants Exhibits 7 to 12, inclusive (pp. 297 to 318 of record). Exhibit No. 12 (pp. 308 to 318 of record) is the proceeding upon the application of appellees had before the Commissioner of the General Land Office, and on appeal by the appellees before the Secretary, for the adjudication of their claim of a Spanish grant to Anastasia Island. The court judicially knows that jurisdiction of the subject-matter was in the Commissioner of the Land Office. The record shows the claimant there by his own petition, and due and proper proceedings had, with an appeal by claimant to the Secretary of the Interior, and, after inquiry into the law and facts, a final decision against the claimant.

Had the decision been otherwise, would appellees have declared the record immaterial to prove title? Appellants contend that under the averments of the bill this record was conclusive of the title to the lands in controversy, but if not conclusive, how can it be held to be irrelevant or immaterial?

As the discussion of this fourth assignment of errors necessarily causes repetition in the argument and citations of counsel, the further consideration thereof may be better postponed until the character of title offered by appellees, as shown by the evidence itself taken in connection with the laws and customs of Spain in force in the province of Florida, is discussed.

FIFTH AND SIXTH ASSIGNMENTS OF ERROR.

The court erred in sustaining the findings and opinions of the master over objections.

The specific objections filed with the court by appellants are set forth on pages 86 to 91 and 91 to 97 of the record, but brevity will be conserved to discuss the errors without reference to the particular objections urged in the court below.

Epitomized, the master found the grant to Fish was a valid, complete, or absolute title to the whole island called Anastasia, except a defined and segregated body of land reserved in the grant.

The facts and the law are so interdependent that it will be well to argue upon the law and facts together.

THE EVIDENCE FOR APPELLEES.

Appellees presented the memorial and copies from vol. 4, American State Papers, page 465 et seq. (Duff Green's ed.). The memorial of Sarah Fish presented to the commissioners appointed by Congress "to try the validity of titles to land in East Florida," sets out that she claims title to the island in front of St. Augustine, running from thence 18 miles south, known by the name of Ste. Anastasia, *supposed to contain 10,000 acres, as belonging to her husband in 1763;* that in 1792 at a sale by the Spanish Governor Quesada, her son Jesse Fish purchased this island; that Quesada, "or his deputy Morales, from the indisposition of Governor Quesada," reserved a *certain part* of the quarry existing on said island for public purposes. "The part so reserved has always been known by the name of the King's quarry, and begins at what is called the King's road to the south, and as far as a *small distance* to the north of the light-house; east and west no farther than *where the quarry ends*, as appears by stakes and (*if not taken away*) were planted at the delivery," "all appearing by the annexed vouchers, delivery of said island, with witness and *Spanish customs*, and receipt from the treasurer for the money."

THE COPIES OF DOCUMENTS IN THE ALLEGED CONCESSION.

The papers are fastened together with thread, and have indorsed thereon, as follows: "Florida, 1794. Jose Fish soliciting from the Government that 10,000 acres of land be granted him, which his father possessed at the plantation called the Orange Grove, which was sold at public

auction." Assuming all to be genuine for the purpose of argument they are as follows: Petition of Fish dated December 2, *1796*, addressed to the governor, and reciting that at the auction of his father's property Fish purchased "the *place* called the Orange Grove" for $1,700; that the land is of no value and the price paid was only for the fruit trees and the wood "on the land belonging to it" (the Orange Grove place); that residents are cutting the wood, and therefore he prays to be declared owner of the lands possessed by his father "*annexed* to the place of the Orange Grove," which he alleges was, "according to the deeds granted in the time of the *British possession*," 10,000 acres, as Leslie and Solaro can testify.

This petition the governor refers to the assessor-general December 15, 1794, and the same day the assessor-general reports that if Fish had asked to prevent trespassing on his lands or to recover their possession according to his title he would render an opinion, but inasmuch as Fish asks to be declared owner of what his father possessed, which was sold at auction by the Government, it is a matter for the governor to determine judicially, the extent of the land purchased, or the right to land as a new settler.

On the same day the governor directs Fish to make proof of the facts on which he bases his right, or his claim to favor.

Thereupon, on *September 22, 1795*, before the notary Zubirazetta, John Leslie testifies that he was one who during the British possession valued the houses and lands of Fish, sr., and among them was the *plantation* named the Orange Grove, which his son now claims; that he

(Fish, sr.) "possessed with *lawful titles* given in the time of the *former Spanish Government*," and had the 10,000 acres, a *little more or less*, and retained it during the British occupancy; that deponent was over twenty-five years. (Que es de mas de veinte y cinco años de edad.)

On *February 10, 1795*, Lorenzo Llanes, before the same notary, testifies that he has always seen Fish, sr., in possession of the Orange Grove, which contained 10,000 acres, more or less, and knew that he possessed it, with lawful titles from the old Spanish Government; that he was *45 years old* (born A. D. 1750.)

On the same day (whether September 22 or February 10 does not appear) Manuel Solano testifies before the same notary that Fish, sr., possessed the plantation called the "Orange Grove" since the time of the old Spaniards until his death, in 1791, and resided there, and from what he had heard of the *survey* and valuation of Fish's property he knows he possessed the 10,000 acres of land at *that plantation;* that he is 46 years old, and at the time of the *old Spaniards* went with José Leon by command of the Government to separate the King's quarries on "said island *in order to grant the remainder of it to Don José Fish*, who solicited it, after it was actually granted to him, after having made such separation." And that two years after the delivery from the British possession deponent, with de la Roque, the engineer, and two workmen, were commissioned by the Government to designate the quarries, which they did, and set up *four stakes* to separate the King's lands on the island, and Fish remained the owner of the remainder as he had been.

On February 12, 1795, the petition of Fish and proof were by the governor referred to the royal collector for opinion. February 27, 1795, the collector reports that at the sale made by the Government of the property of Fish, sr., no account was made of any 10,000 acres of land as annexed to the Orange Grove plantation; that the trees only within the precinct of the grove were sold, and that Fish has a right to nothing more than he bought at the sale; that if the 10,000 acres belonged to Fish, sr., it should be sold for the benefit of his creditors.

That for better (permanency of) proof of the facts in the case the governor should direct that there be attached to the petition and testimony submitted a copy of the inventory and sale of the Orange Grove sold to Fish for $1,605; that if Fish needs lands the governor may grant them to him as a new settler "*according to what his Majesty has commanded* of this particular."

On March 6, 1795, the governor, following the advice of the collector, directs that the testimony indicated (the copy of the inventory valuation and sale of the Orange Grove) be attached to the papers and all returned to the assessor-general's office, that the governor may be advised as to the "*other points*" referred to by the comptroller.

Then follows copies of the inventory, valuation, and sale of the Orange Grove had in 1792.

The essential facts appearing by this copy are, that in regular course of judicial proceedings the estate of José Fish, a deceased British subject, was sold at public auction; that the ninth item in the list, consisting of the improvements at the place called the Orange Grove,

which was admitted to belong to Fish, though there appeared to be no record title known to the Government, were appraised at $2,180, and were sold at auction to Fish for $1,605, the governor, the comptroller, the defender of the estate, and Fish all signing a memorandum of the sale.

This copy of inventory, valuation, and sale is certified to by the notary as of March 12, 1795.

On the 26th day of March, 1795, the assessor-general and the governor signed an order in the premises which is translated on page 468 of vol. 4, American State Papers (Duff Green's edition), at the foot of first and beginning of second column. The translation reads:

> Having been seen, it was passed over to Don José Fish and was thus ordered and decreed by Señor D. Juan Nepomucino de Quesada, brigadier of the infantry of the royal armies, governor, vice royal patron, and subdelegate of the royal domain of St. Augustine, Florida, and its province, for his Majesty, who signed it with the opinion of his honor the assessor-general, March 26, 1795, which I attest.
>
> QUESADA,
> ORTEGA,
> *Licentiate.*
>
> Before me: ZUBIRAZZETTA, *Notary.*

The Spanish reads: Vistos. Traslado a D. José Fish, etc.

Then follows this record, which, in Spanish, reads:

En el mismo dia notifique *el Decreto* que antecedo a D. José Fish doi fee. Zubirazetta Sno. And a similar record of notice to the royal collector.

NOTE.—Appellants contend that here ends all that is genuine of the document; that the order made above by the governor was a final order (decreto) in the case, and a rejection of the petition of Fish, and the original papers were returned to him, "traslado a D. José Fish;" that all the following papers are spurious, and, if not spurious, wholly without authority.

Appellants have placed in the record convincing proofs of the above statements, which will be pointed out to the court.

Continuing with evidence as offered by appellees, we have next in order a new petition by Fish, without date, setting out that he is a new settler in this province; that the above-mentioned documents having been given him, and he being advised of their contents, as also of the matter of the sale at auction of the place of the beautiful orchard (que se me entregaron dhas. diligencias para contextar el traslado que se me confiere de la representacion del Sor. Fiscal, de cuyo contenido enterado y asi mismo de las diligencias subcequenta * * * sacion y remate del mencionado Bergel), he considers that the fiscal is in error when he reported adversely upon the first petition, that Fish is entitled only to the trees and the land on which they stand; that he has produced proof that his father *owned* "El Bergel," the beautiful orchard, for which an expensive price was paid by him, not for *the trees or the land they occupy, but from love of the place where he was born.* Wherefore he prays that a grant of *said island* be made him, and to prove the little value the land he

bought had, and of his intentions, he prays a copy of the written instrument (del escrito) which he presented the notary after the sale, asking for a deed to the land he had bought, which he declares is a part of the proceedings in the case.

On April 17, 1795, the assessor-general, who recites that he is *lieutenant-governor*, directs that the copy be given and the petition and the copy asked be handed to the fiscal. The order recites that it is made by Ortega, because of the illness of the governor.

The copy desired is dated March 22, 1792, and sets out that on the day previous, at the auction of his father's property, there being no one who would bid for the island of the Orange Grove (Ysla del Bergel), that being the place his father lived in his life, he agreed to pay $1,605 *for it*, and he prays to be put in possession of *it* (mandar se le de posesion *de ella*).

Following this copy is a certificate of the notary dated April 20, 1795, that the same is a correct copy taken from proceedings of the sale of the Fish estate, and statement by the notary that the *lands* of the Orange Grove had no bidder at the auction sale.

On May 4, 1795 Yguinez performing the duties of the comptroller "from the illness of the governor" reports that the *possession* which belonged to Fish, sr. was valued, and the trees of the Orange Grove were valued at $2,180, without ascertaining the acres the trees occupied, much less the 10,000 acres as belonging to the estate of Fish, sr. That it is certain that Fish bought at auction only the land and trees "which the said valuation occupy" which was sold to Fish at the auction.

But the fiscal attorney thinks that Fish has proved that the *site called the Orange Grove consisted of 10,000 acres*, and that Fish expected when he bought it that the 10,000 acres which his father enjoyed would be included in the sale, "because separating the land covered by the trees, the remainder is not fit for planting." He concludes "your excellency" may order the boundaries to be marked which correspond to the Orange Grove to the extent of 10,000 acres.

On May 16, 1795, Morales and Ortega approved this last report. On June 13 the proceedings were further referred by Morales and Ortega to the defender of the Fish estate, who reports on the 17th that "your Excellency" may grant to Fish 10,000 acres of land which his father possessed.

Thereupon what purports to be a grant, and what the appellees call an absolute title to 10,000 acres of land purports to be signed by Morales and Ortega.

This recites that from the proof made by Fish it appears that his father had a *possession* from the time of *the old Spaniards* and during British occupancy of the 10,000 acres *at a place* called the Orange Grove (en el sitio nombrado el Verjel) which Fish purchased at auction, that he bid for the land (as well as the trees) and his bid should be so taken, not to prejudice him. The decree then recites his Excellency said he ordered that (1) "whether by the right which the burdensome acquisition of said land gives Fish, which cost him $1,605, which it appears *he paid for the Orange Grove*, (2) or by the right which the ancient possession of his father gives him to the said 10,000 acres of land, or (3) finally in con-

sequence of the petition of Fish that they should be *granted to him as a new settler*, he be *placed in possession* of the said land, which it appears his father possessed, and is already laid off, with the reserve of the quarries, and the remainder which was not granted to his father, and which the King has reserved. * * * and let there be granted to him on the terms above set forth" (y se le concede en los terminos), the notary (Zubirazetta) to mark the boundaries.

> "It was thus decreed and ordered by Señor Don Bartolome Morales, colonel of infantry of the royal armies, commandant of the Third Battalion of Cuba, which garrisons this city of St. Augustine, Fla., and political and military governor (pro tem.) (interino de ella), who signed this with the opinion of his honor the assessor-general, June 19, 1795, which I attest.
>
> (Signed) BARTOLOME MORALES.
> JOSEF DE ORTEGA,
> *Licentiate.*"

There follows as of July 10, 1795, "Proof of boundary and possession: Proceeding to recite that, being at the *plantation* of the Orange Grove, *in the island of St. Anastasia*, (Estando en el plantage nombrado el Bergel *situado en la Ysla* de Santa Anastasia), in conformity to the foregoing decree, Solano, Arribas, and Jorente proceeded to mark the boundaries of 'the land comprised in these proceedings,' passing from *said place* to where the quarries of the King and *individuals* are situated, and passing along the boundaries, went fixing up stakes to point out said boundaries, across the island, and separated *said quarries*, saying that all beside *them* was what *corresponded*

to Don Jose Fish," into which they put Fish in possession, and all signed the writing in testimony thereof save one.

Following is a receipt dated April 19, *1792*, for $1,735, being the amount received from Jose Fish for one lot and "*the plantation called the Bergel* * * * which was purchased by him."

Upon these documents the board of land commissioners report the following decree:

> The board having ascertained the above to be *a valid Spanish grant for 10,000 acres of land*, do therefore recommend it *to Congress for confirmation.*
>
> December 16, 1825.

Appellees also introduced in evidence the report of the land commissioners from page 276 of vol. 4, American State Papers (Duff Green ed.), pages 122–3 of record. Appellees offered evidence of pedigree and to show the possession of *Charles M. Furman, deceased.*

Appellees introduced as a witness to prove the location of what was known as the King's quarries, Mr. Veranceo Sanchez, who testified over objection as follows:

> Question. Do you know the location of what was known as the quarries or King's quarries on said island which were excepted from the said Spanish grant. If so, state particularly as you can the location of the same and your means of knowledge thereof.
>
> Answer. I do. The road leading from the Fish dwelling going east until you come to the crossroad leading north, and continue on a hundred yards or two east, then the same distance north to a pile of

stones, and from there go straight to the light-house, that was known as the King's quarries, extending north and east to the water from this line; that is, the line from the pile of stones to the light-house (p. 250 of record).

C. F. Hopkins, a surveyor, testified that he made a survey of the lands described in the testimony of Mr. Sanchez, and the map of Hopkins's was filed in evidence, with the testimony of the surveyor that he located the lands by commencing at the corner common to sections 16, 17–20, 21, township 7, range 30 east and ran a line to the road, meandering the road to the pile of stones pointed out by Mr. Sanchez, which sections and road are shown on his map. He testifies, "These roads are shown on the map which I have made and are located with reference to the section lines as shown on the map" (p. 115 of record).

Appellees further introduced evidence of the payment of taxes upon certain lands. The receipts for taxes prior to 1860 are without description of any land, except for years 1853 and 1849, which are for 10,000 acres of land without description. The receipt for the taxes of 1889, the only tax paid since A. D. 1860, describe the lands according to the public surveys, and they are assessed to owner unknown (pages 224 to 232 of record).

The foregoing is believed to be a fair résumé of the evidence of appellees.

THE EVIDENCE OF APPELLANTS.

Appellants offered in evidence (p. 151 of record) the published minutes of the Board of Land Commissioners

of date April 21, 1825, showing that the executors of the will of Sarah Fish were substituted for Sarah Fish in proceedings relating to her claims for land in East Florida, volume 4, page 289, American State Papers (Duff Green ed.). The land in controversy and a 500-acre grant are the only lands found in the reports belonging to the estate of Sarah Fish. They offered Exhibit No. 1, a certified copy of the records of the probate court of St. Johns County, Fla., ordering the executors of the will of Sarah Fish to make returns required by law (p. 293 of record; offer made, p. 151 of record); also extracts from American State Papers (miscellaneous) volume 2, pages 876, 877, 881, 883, 887, 888, 889, 895, tending to prove that Anastasia Island was delivered by Spain to the United States as a part of the public domain, and that the United States demanded and received from Spain all the royal orders authorizing grants of land in East Florida with the original records of all grants made in the province, either by the King, the captain-general of Cuba, or the governors, respectively, and the original records of all decisions embracing individual property, and made an inventory of the same (pages 151 to 154, and pages 154 and 155 of the record); also extracts from the American State Papers (vol. 8, Gales & Seaton ed., pp. 247, 249, 251, 254, 261 to 264, 265, 266, 271, 279, 280, 281, 288; pp. 155 to 172 of record), showing that Congress required information as to the grants of land made in Florida while a Spanish province; that such information was furnished by responsible and prominent officials of this Government, specially advised, setting forth the character and extent of the grants made and

the laws existing in said province at various epochs authorizing the several grants, and transmitting as part of such report the testimony as to the customs and practice in land matters formerly existing in Florida when a Spanish province, and a *complete list of all the real or royal or complete titles to lands issued at any time by the Spanish authorities in East Florida*, with the name of the grantee, date of grant, quantity granted, and by what governor the title was issued.

Also (p. 249, vol. 8, A. S. P.), tending to show that private claims were reserved from sale as public lands and delineated on the township plats by direction of the Land Office as early as 1834, when evidence of the existence of such private claims was furnished, even if such claims were unconfirmed, provided they had been in due time and according to law presented to be investigated (p. 156 of record).

Also, a certified copy from the General Land Office of the tract book of township 7, range 30 east. (Ex. No. 2, p. 381 et seq., of record.)

Also, Exhibit No. 3, the President's proclamation of sale of lands on Anastasia Island as public lands, dated March 8, A. D. 1839 (p. 293–294 of record).

Also, Exhibits Nos. 4, 5, and 6, the President's orders, declaring military and light-house reservations on the public lands of Anastasia Island from 1869 to 1893 (pp. 295–296 of record).

Also, Exhibits Nos. 7, 8, 9, 10, 11, and 12, showing the official action had before the Land Department in the matter of the claim of Charles M. Furman for lands on

Anastasia Island (pp. 297 to 308 and 308 to 318 of record).

Exhibits Nos. 13, 14, 15, and 16, showing the concession to Jose Fish, dated April 1, 1793, of 500 acres at Grahams Swamp as a new settler, its consummation into a royal title April 24, 1819, with the proofs on which such complete title was issued, and the recitations therein contained of what was required to obtain a royal title, and the application to the United States for confirmation of said grant (pp. 318 to 324 and 324 to 338 of record).

Exhibit No. 17, certified copy from the archives of the Spanish concession to Lorenzo Rodriguez, dated February 16, 1793, for lands on Anastasia Island (p. 339 of record). See vol. 8, American State Papers, page 264, for evidence of issuance of the royal title, dated January 9, 1805; also vol. 4, pages 61–268; vol. 5, page 420 (Duff Green ed.); vol. 6, page 119 (Gales & Seaton ed.), American State Papers.

Exhibit No. 18, Spanish concession to Francisco Sanchez, of lands in Anastasia Island (p. 341 of record).

Exhibits 19 and 20, copy of published notice to claimants under Spanish grants to present their claims that they may be exempt from sale as public lands (pp. 343 and 344 of record).

Appellants also offered from Clark's Land Laws[1] (pp. 1023 et seq.) extracts tending to prove that British grants were required to be recorded to be of validity

[1] The title of the book is Laws of the United States, resolutions of Congress, etc., respecting public lands. Compiled by order of Congress, dated February 19, 1827. Washington, 1828.

under the treaty of 1783 between Great Britain and Spain, and were forfeited if not so recorded and confirmed by Spain (p. 176 of record).

Also evidence that under the Spanish dominion there existed one office for the issuance and custody of concessions and another office for the issuance and record of complete titles, and the practice to entitle the grantee to a royal title after a concession granted (pp. 171 and 177 of record).

Also from Clark's Land Laws (p. 974) so much of the Royal Regulations of October 15, 1754, as declares the complete title to be in the King's name and its legal effect, and from page 973 the King's direction for compliance with the regulations in grants of land made (p. 180 of record).

Also from Clark's Land Laws (p. 1015) the testimony of Clark of the practice under Spain to procure concessions and titles to land (p. 180 of record).

Also on pages 1013 and 1014 of same book, testimony of Hernandez upon the same customs (p. 181 of record).

Also from Clark's Land Laws, page 994 (see the same in the Report of Commissioners, vol. 3, page 624, American State Papers, D. G. edition), regulations of Governor Quesada, that he would make concessions in the name of the King of lands for settlement, in quantity required, upon petition and proof, but though authorized by the laws of the Indies he would *make no absolute titles*, but would report such cases to the King for confirmation of the concessions made by him (p. 181 of record).

Also from Clark's Land Laws (p. 997), the order of Governor Quesada, dated November 20, 1790, promul-

gating the royal order of 1790, and the limits of the grants to be made thereunder (pp. 181, 182 of record).

Also from volume 3, American State Papers, page 743 (D. G. ed.), the list of Spanish governors from A. D. 1784 to A. D. 1811 (p. 197 of record); and from volume 5, American State Papers (p. 669), so much of the Spanish ordinances as prohibits grants to foreigners of any islands (pp. 197, 198 of record).

Also from volume 5, American State Papers (p. 54, D. G. ed.; p. 403, G. & S. ed.), extract from the report of land commissioners showing the practice in land grants under Spain and defining a royal title (pp. 212, 213, 214 of record).

Also from volume 5, p. 372, Duff Green's edition (vol. 6, p. 55, G. & S. ed.), American State Papers, extracts from report of the register and receiver acting as commissioners, setting out the practice existing in the province of Florida for the granting of lands during Spanish occupancy (p. 214 of record).

Appellants also introduced evidence tending to show that Fish's Island only had been occupied by claimants under Fish, and that Anastasia Island had been treated on all sides as public lands.

John S. Masters, a witness for appellants, 91 years old, had been foreman for the United States for seven years during the construction of the sea wall at St. Augustine from the stone quarries on Anastasia Island.

A. D. Rogero, 85 years old, formerly tax assessor and sheriff of St. Johns County, was also a witness.

Neither of these witnesses had ever heard of the boundaries to the King's quarries or of such quarries (pp. 184

and 188, respectively, of record), and both witnesses testified that Anastasia Island was considered public land (pp. 185 and 188, respectively, of record).

Bruce, Colee, and Van Dyke, witnesses for appellants, had entered homesteads on the lands (pp. 193, 199, and 196 of record).

Vevanceo Sanchez, a witness for appellants, testified that he believed Fish was a Spanish subject because he owned property (p. 206 of record); that he (Mr. Sanchez) had been shown the will of Sarah Fish by the county judge, its custodian; that the will devised these lands; that he considered the will of no effect for want of title in Sarah Fish, and he claimed that his (Mr. Sanchez's) wife and her family inherited by descent at the death of Sarah Fish (pp. 207, 254, and 255 of record); that his son, W. J. Sanchez, has been and is in adverse possession of the Fish homestead (pp. 208–252 of record).

William W. Dewhurst, solicitor for defendants, a witness for appellants, testified that he had examined the original title papers in the claim of Jesse Fish for lands on Anastasia Island in the archives (surveyor-general's office); that the only documents found there relating to this claim was a document numbered No. 17, of bundle F, No. 373, which bundle consisted of 100 loose, unbound documents, numbered from 1 to 100, inclusive, and labeled "Memorials and concessions of land." That document, No. 17, consisted of 22 pages, was entitled "Florida ano de 1794, D. José Fish, solicitando del Govierno, sele concedan los diez mil acres de tierra que poseiia su defunto padre del mismo nombre en el plantage nombrado

el Bergel y remante en publica subasta;" that this document was mutilated by having the left-hand half of the sheet, pages 16 and 19, entirely torn off; that the sheets were fastened together by thread, the water marks of the paper of various designs, those in the middle of the document varying from those at the beginning and end; the dates at variance, the first paper being dated 1796 while the last was dated 1795; that the papers had no file mark and nothing to establish that they were genuine, except the signatures and flourishes, when these should be proved; that from long experience in the investigation of Spanish titles witness knew that it was the practice for the governor to indorse on the left-hand half or third of the last page of the original petition for lands his ruling or order in the premises, like the copies in evidence in the claim of Fish for 500 acres (Exhibit No. 13, pp. 321, 323–325 of record); that in the Florida cases witness had never found a title emanating from Morales except the one in controversy, nor any title issued by any other than the governor in person except one by intendant of Cuba and one by council at Havana; that in the many titles in St. Augustine derived from Fish at the auction sale of his estate, which witness had examined, all purchasers at that sale save Fish, jr., had taken a complete title in the form shown by the deed to Bartolome Sintro (defendant's Exhibit No. 31), the title being in the name of the King, made by the governor with recitation of his authority at length, and words of absolute conveyance and segregation; that the records of the district court for East Florida had been burned, but wit-

ness was satisfied Sarah Fish's heirs never presented this claim for adjudication to the courts (pp. 216 to 219 of record).

Appellants also offered from Vol. 5, American State Papers, page 751 (G. & S. ed.), such parts of the Spanish and French ordinances, compiled by Jos. M. White by order of Congress and now in the State Department, as tended to prove that the title to Don John McQueen in evidence, on pages 168–169 of record, was declared by Spanish authority to be the model of a royal title, with the conditions on which such titles of proprietorship were issued (p. 220 of record).

NOTE.—The title to McQueen is printed on page 280 of Vol. 8, American State Papers, and the same evidence is set out in Vol. 2, pages 280 and 281, White's New Recompilacion. See also pages 272 to 291 of White for a full understanding of this evidence.

In rebuttal the appellees offered a certified copy of the original title papers to Fish from the archives, document No. 17, to which objection was made because—(1) it was not in rebuttal; (2) from the title papers it appeared to be a mere concession, not evidence; (3) the papers were mutilated; (4) the paper title was set forth on loose sheets, without file mark to identify them; and on their face show that a final order of the governor rejected the claim, while the sheets attached after the governor's rejection are not signed by one having authority; (6) the original petition is dated 1796, while final order is dated 1795 (p. 221 of record).

Appellees also offered in rebuttal the witness Frito, who translated the papers. This witness testified that he followed the printed copy in American State Papers, and that he saw no difference in translating the Spanish verb "concede" either grant or concede; that the expressions translated by him "terms above set forth" meant "conditions set forth" (p. 222 of record).

William W. Dewhurst, a witness for defendant, again testified that the title papers to Fish, offered as complainant's Exhibit U, are a copy of the documents testified to as examined by him in the archives (see his testimony, p. 216 of record), and that the copy has been made to conform to the originals—that is, the same words on each page of the copy as on the corresponding page of the original; the same relative position of the signatures; the same blank pages; and the same marks of mutilation by removal of parts of pages (p. 223 of record).

Upon the foregoing evidence the master finds and reports that the United States acquired no title to the lands in controversy, and that the appellees are entitled to the relief prayed in their bill, except as to certain lands which the master reports are within the reservation made in the alleged grant, and certain lands which the master *reports that he is unable to definitely ascertain whether or not they are within the reservation or the grant*, and so excludes from the limits of the grant.

ARGUMENT UPON ERROR ASSIGNED IN SUSTAINING THE FINDINGS AND OPINION OF THE MASTER.

In arguing these, the fifth and sixth assignments of errors, it will conduce to brevity to argue the evidence as

a whole. The specific exceptions to the master's report and opinion are set out in the record on pages 86 to 91 and 91 to 97, and are not waived.

We will consider, first, appellee's evidence of pedigree; second, appellee's evidence of possession; third, appellee's title papers.

PEDIGREE OF APPELLEES.

The bill avers a grant to Jesse Fish, A. D. 1795; death of Jesse, A. D. 1798, intestate, surviving his mother, Sarah Fish; death of Sarah, A. D. 1825, *intestate*, survivor her granddaughter, Rosalie B. Perpall (called in the bill Jessie B. Perpall), who intermarried with Charles M. Furman. Rosalie Perpall Furman died intestate A. D. 1827, "leaving as her only heirs at law her husband, said Charles M. Furman, and one son, Gabriel William Furman;" Gabriel William Furman died in infancy in A. D. 1836, leaving his father surviving, and, as the bill alleges, "his only heir;" Charles M. Furman died A. D. 1872, and appellees claim by devise from said Charles M. Furman.

Have appellees proved title in themselves, as alleged in the bill? Appellants contend that, on the contrary, they have proved title in the descendants of Gabriel William Perpall, the maternal grandfather of the infant Gabriel William Furman.

The law applicable is on page 189, Thompson's Digest of the Statute Law of the State of Florida, section 11 (sec. 11, on p. 361, Duval's Compilation, where the original act appears).

The title of the act is, "An act regulating descents."

SECTION 1. *Be it enacted, etc.*, That whenever any person, having title to real estate of inheritance, shall die intestate as to such estate, it shall descend in parcenery to the male and female kindred in the following course—that is to say * * *

SEC. 11. And where an infant shall die without issue, having title to any real estate of inheritance, derived by gift, devise, or descent from the mother, and there be living at the death of such infant his mother, or any brother or sister of such infant on part of the mother, or the maternal grandfather, or the grandmother of the infant, or any brother or sister of the mother, or any *descendant of any of them*, then such estate shall descend and pass to the maternal kindred without regard to the father, or other paternal kindred living at the death of the infant, saving, however, to such father the right which he may have as tenant by the courtesy in the said estate of inheritance.

SEC. 14. And in the cases before mentioned, where the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood to the intestate, and another part of the half blood only, those of the half blood shall inherit only half as much as those of the whole blood, but if all be of the half blood they shall have the whole portions, only giving to the ascendants (if any there be) double portions.

To succeed, appellees must have proved, first, the intestacy of Sarah Fish, and, second, title by descent from the infant Gabriel William Furman.

Appellants contend the evidence is conclusive on both points against the claim of appellees.

Sarah Fish died testate as to this land. The evidence on this point is as follows, namely, the extract from the minutes of the board of land commissioners of date April 21, 1825, vol. 4, p. 289, American State Papers (Duff Green ed.), reading as follows: "On motion, permission was given by the board to the executors of the estate of Sarah Fish, deceased, to amend the memorials in the claims of Sarah Fish" (p. 151 of record), one of the claims was the claim for the land in controversy; also a certified copy from the minutes of the county court for St. John County, Fla., of 27th July, A. D. 1841, naming the executors of the will of Sarah Fish, and ordering them to file their accounts. (Exhibit No. 1, pp. 291 to 293 (293) of record.)

This evidence was objected to as irrelevant, etc., also because the copy from the minutes of the county court purported to be an exemplification of the records of the probate court of St. Johns County, certified to by the clerk of the circuit court, who is not the proper custodian of the records of which the paper purports to be a copy (p. 151 of record). To meet this objection, the original record book was brought into court by the clerk of the circuit court, the handwriting of the clerk and judge of the probate court were proved, and the certified copy of the records was then proved as an examined copy (p. 191 of record).

But the objection was not valid. The record book was shown to be the "County Court Minute Book." Under the constitution of Florida, as it existed A. D.

1841, the county court had jurisdiction of probate matters and also jurisdiction of civil proceedings where the amount in controversy was under $1,000. (Territorial act, February 17, 1833, pp. 273 et seq.; Duval's Compilation acts of Territory of Florida; "Act to establish county courts, and prescribe their jurisdiction," sec. 2–sec. 8.) By section 13 a clerk was provided to keep the records and minutes, and by section 15 the office of the clerk of the county court was the office of original record for deeds, mortgages, wills, etc., required to be recorded. By the constitution of 1845 the civil jurisdiction of the county court was abolished and transferred to the circuit court. (Art. 5, sec. 6, constitution A. D. 1845; sec. 5, chap. 4, Session Laws of Florida, approved July 22, 1845.)

By sections 5 and 8 of the act of July 22, 1845, all causes and all proceedings and papers connected therewith or relating thereto were transferred to the circuit courts.

The witness, Dunham, clerk of the circuit court, testified that the docket produced from his custody contained minutes of civil and probate causes (p. 191 of record). If the docket related to both the civil and probate business of the county courts, and the civil business alone was transferred to the circuit court, how then could there be a separation of the docket and a part retained in one court and a part transferred to another? Appellants contend that the minute book is a record of both courts; of the county court by the act of 1833, and of the circuit court by the act of 1845, and in whosesoever hands it was found, whether the county judge as the custodian of the

county court records, or the clerk of the circuit court as custodian of the circuit court records, either custodian was competent to give certified copies.

All that was required was that the record be found in a place it naturally and reasonably might be expected to be found, though not strictly in the proper custody.

1 Greenl. Ev., sec. 142.
2 Phill., Ev., edition of 1859, pp. 390–421, 439, 443–450, 453.

The evidence was before the master and competent either as a certified copy by a lawful custodian authorized by law to give copies, or an examined copy of a public record, proved by the witness, Dunham.

But the evidence was but cumulative, for appellees had proved the fact of Sarah Fish's testacy by their own witness. Mr. Sanchez testifies that he saw the will of Sarah Fish in the hands of the probate judge of St. Johns County, "in the archives in the clerk's office;" "that the will *devised this land* between her blood relatives in South Carolina and to her daughter, Rosalie Perpall Furman" (pp. 255 and 257 of record); that he did see it in the proper office for such records before the office was burned; that he presumes the will was burned in the fire of 1887 (p. 255 of record); that under the will of Sarah Fish Mr. Furman was put in possession of the homestead (p. 248 of record).

The witness, Dunham, clerk, also testifies that the original papers of the probate office were burned in 1887 (p. 191 of record). Mr. Sanchez verifies his testimony

as to the will by testimony connecting therewith certain proceedings instituted or contemplated by parties claiming thereunder (p. 209 of record).

Mr. Sanchez claimed in hostility to the will and was their own witness, yet he proves not only testacy, but a devise of this property.

Upon proof of Sarah Fish's testacy the presumption is that all her estate was devised. Every testator is presumed not to die intestate as to any part of his estate. The will was in the probate office and it must be presumed to have been duly executed and probated. The burden is on those claiming in hostility to the will to establish want of due execution. After the lapse of seventy years and destruction of the records by fire, every presumption is in favor of the validity of the will to devise all the testator's estate.

1 Jarman on Wills, 220;
Sec. 1810, Revised Stats., Florida;
Williams Extxs., 450 (3 Am. Ed.);
Belton v. *Sumner*, 31 Fla., 139;
19 Am. and Eng. Enc. Law, 181, note 1.
Stevenson v. *Huddleson*, 13 B. Monr. (Ky.), 299.
Gaines v. *New Orleans*, 6 Wall., 642.

But appellants were not required to prove testacy; appellees were required to prove intestacy. The answer denies that Sarah Fish died intestate, and while the answer, being without oath, was not evidence, it put in issue the facts averred by the bill. The bill did not aver testacy generally, and intestacy as to this land for want of proper execution of the will to devise

land, but intestacy generally, "that Sarah Fish died intestate." The allegations of the bill as to the intestacy of Sarah Fish were not only not proved, but appellees proved by their own witness that she died testate as to this land.

TITLE FROM THE INFANT GABRIEL WILLIAM FURMAN.

If appellees could overcome the evidence of testacy of Sarah Fish they are not benefited, for Charles M. Furman did not inherit the title of his wife or son.

By the statutes of Florida and the evidence in this case Gabriel William Perpall, grandfather, and his blood are the lawful heirs of the infant Gabriel William Furman.

The statute of descents in the Territory of Florida was passed August 12, 1822, and the act continued in force until 1829. (*Jones* v. *Dexter*, 8 Fla., 278.)

By the act of 1822, real property descended first to children, if any. The husband had only a right of courtesy in the wife's realty. Hence, on the death of the mother, Rosalie Perpall Furman, her property passed to her infant son, Gabriel William. At the death of the infant Gabriel William Furman, in 1836, by virtue of the act of 1829, regulating descents, his property passed to his mother's kindred, if any were living at the date of the infant's death.

Thomson's Digest Statutes Florida, p. 189; p. [illegible] this brief.
Jones v. *Dexter*, 8 Fla., 276.
Bailey v. *Fudgeon*, 25 Fla., 153.
Gaugler v. *Rogers*, 25 Fla., 853.

Were there any of the maternal kindred of the infant Gabriel William Furman living at his decease, A. D. 1836?

The agreement between Lieutenant Tuttle and Gabriel W. Perpall (Exhibit H, p. 259 of record) is proof that the maternal grandfather, Mr. Perpall, was alive in September, A. D. 1833. Having shown an heir alive in A. D. 1833, within three years from the date of the infant's death, the burden was on appellees to show his death.

But this proof would not avail them, for the evidence of their own witness, Mr. Sanchez, was that his wife was a sister of the mother of the infant and a daughter of the infant's maternal grandfather, and that her son, William J. Sanchez, was still living, born in A. D. 1850 (pp. 248 and 250–252 of record). See also his testimony that he purchased the interest of the children of Perpall, after taking possession of the Fish homestead, about forty-five years ago, A. D. 1850 (pp. 248 and 254 of record).

If William Sanchez, a grandson of Gabriel W. Perpall, was alive in A. D. 1897, it is an absolute impossibility that there could have been no one of the infant's maternal kindred alive in A. D. 1836. Argument is unnecessary.

If Jesse Fish had any title to the lands it passed to the blood of Gabriel W. Perpall, and such is Mr. Sanchez's contention in his evidence (p. 207 of record).

Appellees could not recover without showing positive evidence of the extinction of the branch to whom the law gave the inheritance. 3 Phillips's Evidence, page 597 (4 Am. Ed., A. D. 1859).

Yet the master reported to the court that Sarah Fish died intestate as to all the real estate known as Anastasia Island, and that Charles M. Furman was the heir at law of Rosalie Perpall Furman and the sole heir at law of her son, William G. Furman (p. 58 of record).

APPELLEES' EVIDENCE OF POSSESSION.

The bill avers that Fish was put in possession of his alleged grant in A. D. 1795; that until the present time claimants under Fish have occupied the Fish homestead on said island and cultivated the fields thereon, and used the woodlands for fuel, paid taxes when assessed, and exercised such acts of possession as the property was capable of (p. 273 of record).

These allegations of possession were put in issue by the answer (p. 20 of record).

It will be seen that the bill avers an actual possession of the homestead and a constructive possession of the great body of the lands alleged to have been granted, including the lands in controversy; it avers the defendants not to be in possession, but it does not allege the lands are unoccupied. Upon the demurrer appellees sustained the averments of the bill by reference to section 1500 of Revised Statutes of Florida, but while the case was pending the supreme court of Florida so construed that section (*Hughes* v. *Hanna*, 22 So. Rep., 613) that this contention was abandoned at the hearing, and they are proceeding independently of statute, under the general jurisdiction and practice in equity.

The evidence of appellees shows no actual possession of any lands beyond the Fish homestead, through Mr. Veranceio Sanchez as their agent; and further shows that appellees have been, and still are, disseized of that possession. Mr. Sanchez testifies:

> I claim Sarah Fish had no right to make a devise of the property. All her right was a dower interest for life, and then the property passed to my wife and the Fish heirs. That is my claim. I have claimed that all the time, and claim it now (p. 207 of record).
>
> I claim through my wife, who was an heir of Jesse Fish, sr., and by purchase from the other heirs, Perpall's children, whereby I claim a half interest under the rules of Spanish law (p. 254 of record.)
>
> My son owns the lands sued for by Magruder & Logan (for convenience so designated), identified as embracing the homestead.
>
> Question. Has your son been in continuous possession since he purchased?
>
> Answer. Yes.
>
> Question. Has the possession of your son been under claim of ownership of the land?
>
> Answer. Yes (p. 252 of record).
>
> I gave up possession to him (W. J. Sanchez) subject to any settlement. I still claim an interest in the property under the Fish grant (p. 256 of record).

It will thus be seen that upon the evidence appellees have no actual possession of any part of the lands alleged to have been granted.

Were it otherwise, would the actual possession of the homestead be a constructive possession of the body of

the alleged grant? We contend not, under the rules of law.

The homestead was situated wholly on a small island called Fish's Island. (See coast survey map, appellants' Exhibit 25, appended to the record after p. 380; testimoney of Mr. Sanchez, Harrington, Colee, Rogero, and Masters, pp. 149, 185, 187, 198 and 251, respectively of record.)

Appellees, in their bill, claimed the lands as described by the public surveys, and offered in evidence the township maps of townships 7, 8, and 9, range 30, showing the lands subdivided into 40-acre tracts by the public surveys in A. D. 1834, approved 1852. On behalf of appellants it was shown that Governor Coppinger delivered Anastasia Island to Colonel Butler as a part of the public domain; that the United States had been in actual occupancy of the lands, first, by survey since 1834, and, second, by reservations of parts of the lands from 1869 to 1893, with a claim of ownership of the whole evidenced by the issuance of patents and allowance of entries from A. D. 1856. (See appellants' Exhibit No. 2 appended to the record, and Exhibits 3, 4, 5, and 6, pp. 294, 295, 296 of the record.)

It must be remembered that these lands were a part of the territory purchased by the United States from Spain, and both parties were and are claiming under a common grantor. The sovereign shall be possessed without seizure. (Comyn's Digest Prerogative, vol. 7, p. 78.)

The Florida statute defining and extending a constructive possession was not enacted until A. D. 1872, and

upon the facts in evidence the United States had long before been in the possession of the lands in controversy, claiming as owner. The bill avers constructive possession in the terms of the statute, but this statute does not apply to great bodies of land subdivided into 40-acre tracts.

Jackson v. *Woodruff*, 1 Cowan, 276.
Thompson v. *Burhans*, 61 N. Y., 69.
Monro v. *Merchant*, 28 N. Y., 43.

Constructive possession must be founded upon a written instrument, effectual in itself as to form and execution to effect a conveyance of the premises claimed. We shall show that at most appellees had a mere concession, not effectuating a legal ownership of any lands, but being a mere right to occupy, at the pleasure of the King, and that not made by the officer whom the court has declared to be the lawful authority referred to in the treaty.

Upon the averments of the bill and the evidence adduced, there was no evidences of legal title upon which to found a constructive possession. (*Jackson* v. *Waters*, 12 Johns, 365.)

Even if the appellees' contention that their alleged grant was confirmed by the treaty be sustained, yet this confirmation could not extend beyond the boundaries given in the grant itself, and there is no evidence that the lands in controversy are the premises described in the written instrument under which appellees claim, namely, the alleged grant of 1795. This grant excepted

not only the quarries, but the lands reserved by the King and the remainder which was not granted.

Where is there any proof of the area or bounds of the reserved lands? Mr. Sanchez attempted to locate "what was called the King's quarries." He had no knowledge of what was reserved in 1795, and admitted that his information was derived from reading the American State Papers—that is, the petition of Sarah Fish which attempts to locate the quarries by old roads and stakes set, "if not taken away" in 1824. There is nothing in the title papers themselves to identify the bounds of the grant, absolutely nothing.

> Revised Statutes of Florida, sec. 1290.
> *McDonough* v. *Millaudon*, 3 How., 693 (11–793).
> *United States* v. *King*, 3 How., p. 786 (11–830).

The premises claimed in the bill were certain subdivisions according to certain boundaries established by the United States claiming in hostility to appellees. The exception from the alleged grant admitted to belong to the United States was only identified by reference to these boundaries marked by the public surveys made many years after possession taken by the United States. It was shown by the agreement made with Lieutenant Tuttle, filed by appellees, that in 1836 the boundaries of the lands claimed by the heirs of Fish, were then unknown (p. 259 of record). According to the most favorable contention, the grant was of certain lands delivered on the grounds, marked off by stakes, but not described in the written instrument under which appellees claim. There is no evidence that any segregation of the alleged grant or reservation was ever made

since the transfer to the United States. As against the United States claiming as grantee from the common grantor, there could be no constructive possession, and in case of a private ownership, constructive possession would not exist before a segregation of the lands claimed by each of the grantees from the common grantor. Without the segregation by a survey, a fee simple estate on which to found a constructive possession could not be acquired from the Spanish Government. 4 Ops. Atty. Genl., 683, cited in *Dautrive* v. *United States*, 101 U. S., 700 (25–871).

Upon the evidence the appellees were not in possession of the lands in controversy and were not entitled to maintain their bill, even if they had shown a complete grant.

2 Story, Eq. Jur., sec. 700, note a.
3 Pom., Eq. Jur., sec. 1399, note 4.
Phelps v. *Harris*, 101 U. S., 370 (25—856—7).
Mackall v. *Casilear*, 137 U. S., 556 (34—7).
Frost v. *Spitley*, 121 U. S., 552 (30—1010).
See cases cited in *Dick* v. *Foraker*, 155 U. S., page 414.

Upon these facts and the law the master reports in his findings that "the heirs of Fish * * * have possessed and actually occupied the plantation of the Orange Grove on said island, in actual area a little less than 100 acres, and claimed possession of and title to the whole of said island, with the exception of the lands so reserved," and he enumerates as evidence of possession

the actual occupation of the homestead since 1824, repair of the buildings, fences, and dams about the plantation; in paying taxes "on the whole island of 10,000 acres up to the year 1856, *as long as taxes would be received;*" in paying taxes for the year 1889; in building new buildings, defending suits against the lands of the Orange Grove and adjacent lands, agreeing with the United States as to quarrying stone, protesting against the action of the United States in allowing homestead entries, and against the claim of the United States that said lands were public domain; in getting wood, posts, and fencing from the lands adjacent to the Orange Grove, and in obtaining wood from the beaches; that Fishs Island embraces lots 2, 3, and 6 of section 29, township 7, range 30, and is the place of the Orange Grove, but is not an island in itself (pp. 54 and 55 of record). Admitting the correctness of the findings, there is certainly nothing in the facts as found that extends the actual occupancy beyond Fish's Island. The master finds this is not an island, but appellees' own witnesses, Sanchez and Harrington, say it is (pp. 251 and 149 of record). There is no dispute that it is called an island, whatever it be in fact.

The master finds the Fish heirs paid taxes as long as they would be received. The law requires the owner to return his lands for taxes annually, and it can not be doubted that if these lands were returned as private property the State would accept taxes. The fact is that in this respect also appellees have shown evidence of abandonment, and paid no taxes on the lands from 1856

to 1889, and in 1889 upon the lands assessed to owner unknown.

The master in his opinion argues away the evidence of possession adverse to appellees' claim by the statement that as to these lands possessed under title from the United States, the complainants claim no relief in this suit (p. 75 of record).

This is begging the question of constructive possession by occupancy of a part claiming ownership of the whole. If many parts of the tract in dispute are unoccupied by either of the litigants, but are adversely possessed, all held under a claim of title set up by one of the two parties claiming the land, the question of which party has the constructive possession of the unoccupied parts becomes a question of law, depending on which has the legal title, and is determinable in a court of law.

We do not dispute the rule that seizin follows title, but in case of disputed title claimants can not proceed by bill in equity to determine the question unless in actual possession. As said in the case from 101 U. S., 370, cited above, if defendants' title is merely doubtful, it is more than a cloud, and they are entitled to have it tried at law. Appellants claimed to be in constructive possession of the lands in controversy under title from the United States, after an exercise of the power of decision upon appellees' title by the Land Department. As said in the case from 51 Miss., 789, cited and approved by the court in *Phelps* v. *Harris*, "had the defendants derived their title even from a doubtful exercise of power, that of itself would be sufficient to exclude the complainants' resort to

equity, upon well-settled principles." The bill should have been dismissed at the hearing as not within the equity jurisdiction of the court for want of possession of the lands in controversy by the appellees, complainants in the bill.

APPELLEES' EVIDENCE OF TITLE.

Appellants contend that before any title papers were receivable in evidence it must appear, first, that such title papers were executed by the King of Spain or his lawful authorities; second, that the title papers operated to invest a right of absolute property. In these Spanish grants it must be not a first concession, requiring to be completed by any act of the granting power, but a royal or real title. Unless it appeared by the evidence that the grant was executed by the lawful authorities of the King of Spain and conveyed an absolute right of property, no suit could be maintained against the patents of the United States.

THAT THE TITLE PAPERS MUST BE EXECUTED BY THE LAWFUL AUTHORITIES OF THE KING OF SPAIN.

The master reports that the power to grant lands in East Florida was conferred not upon the governor, but upon the office itself (p. 70 of record). No authority for this assumption is cited, and none could be cited, for it is contrary to all authorities. By the Spanish laws the King was the source and fountain of title to all lands, and lands could only be disposed of by the King or his

duly authorized representative, delegate, or subdelegate. "Lands which were not granted by the Kings, our predecessors, or by ourselves in our name belong to our patrimony and Royal Crown." (Law 14, title 12, Book 4, recompelacion, cited in *United States* v. *Santa Fe*, 165 U. S., 709.)

Lands were vested not in the State, but in the Crown. It was the *peculium* of the King, one of his regalia, to be disposed of by his own officers at his sovereign pleasure.

1 White's Recompelacion, p. 52.
De Armas v. *New Orleans*, 5 La., 132.

In East Florida the governor was the lawful authority referred to in the treaty.

United States v. *Clark*, 8 Pet., 449 (8–1006).
Mitchell v. *United States*, 9 Pet., 735 (9–292).

Lawful authorities in the eighth article and competent authorities in the ratification by the King mean those persons who exercise the granting power by *authority of the Crown*. (*United States* v. *Clark*, 8 Pet., 449.)

The term "lawful authorities" designates the governor as certainly as if he had been expressly named in the eighth article of the treaty. He is the officer who was empowered by his sovereign to make grants of land.

8 Peters, 452.
Menard v. *Massey*, 8 How., 296 (12–1090–91).
Pollard's Heirs v. *Kibbe*, 14 Pet., 398 (10–512).

The governor acted in the grant of lands, in the name and by the authority of the King as his direct representative. (14 Peters, 406 (10–516).) The governor was the King's deputy. (*United States* v. *Acosta* 1 How., 26

(11–34).) The eighth article of the treaty designated the governor as invested with authority to grant lands. (*United States* v. *Wiggins*, 14 Peters, 334 (10–484).)

Lands in East Florida were only granted (1) by the King, (2) by the intendants of Cuba, (3) by the governor. "The royal title is made by the governor * * * and when within the proper power of the governor is as full, perfect, and complete as legal ingenuity could devise." (Vol. 5, American State Papers (G. and S. ed.), p. 404; p. 214 of record.)

When the archives were forcibly taken from the former Escrebano, Entralgo, the commissioners appointed enumerated the records to be taken, naming the original records of all grants made by either His Catholic Majesty, the Captain-General of Cuba, or the governor of the province, respectively (vol. 2, American State Papers (miscellaneous), p. 895; p. 155 of record).

See also page 973, Clark's Land Laws, royal order of 1754; also testimony of Segui, page 178 of record. In answer to the question, "Could anyone have anything to do with the public domain but the governor?" he replies, "No one."

It will be observed that in the title papers offered in evidence where a formal decree is made by Quesada he subscribes himself "viceroyal patron and subdelegate of the royal domain" (p. 130 of record).

The language of the treaty confirms the grants by the King, or by his competent authorities in his name (las concesiones de tierras en las Floridas, hechas por mi ó por las autoridades competentes en mi real nombre).

It has never before been questioned that the power to

grant lands was a personal trust from the King to the individual appointed by him to represent him in the province, and it probably never would have been questioned had any record been found investing with authority the individual purporting to have made the concession in the case at bar.

It is to be noted that while in the Louisiana Territory there were deputy governors there were no such officers in Florida, which was under the intendancy of Cuba. Even in Louisiana the deputy governors could not issue a complete title, but might make the first decree of grant and order of survey *if he was also subdelegate*.

Delassus v. *United States*, 9 Pet., 134.
Chateau's Heirs v. *United States*, 9 Pet., 145.
Carmichael v. *Brisler*, 8 Martin, 727.

THE TITLE PAPERS OF A GRANT MUST BE OF A CHARACTER TO CONVEY AN ABSOLUTE TITLE, BY WHOMEVER EXECUTED, TO BE THE BASIS OF A SUIT AS AGAINST A PATENT FROM THE UNITED STATES.

Burgess v. *Gray*, 16 How., 62 (14–839).
Menard v. *Massey*, 8 How., 306, 307.
De La Croix v. *Chamberlain*, 12 Wheat., 599.
United States v. *King*, 3 How., 787 (11–830).

A grant under the Spanish law meant not a perfect title, but an incipient right, which when surveyed required confirmation by the governor. *United States* v. *Hanson*, 16 Pet., 200 (10–936).

Although the master failed to consider the mass of evidence in the record distinguishing a concession from a

royal title, the difference in form and the customs respecting the several titles have been made too plain for argument by the Spanish records published by authority of Congress.

After the grant of nearly all East Florida by the King of Spain to the Duke of Alagon the latter sent to St. Augustine his agent, Nicholas Garrido, to learn the extent of his estate. On the 13th of September, 1818, Garrido addressed a letter of inquiry to the governor asking to be advised as to the different titles theretofore granted in the province of East Florida. This brief will not be extended by a detail of the letter, as it will be necessary to consult the citations. See volume 2, White's Recompilation, pages 273–291; 5 American State Papers, 750 (G. and S. ed.). On page 280 (White) the governor directs that an attested copy of each class of titles of proprietorship be furnished (a concession and a royal title); on page 282 (White) the royal auditor reports that the form of the title in absolute property is exhibited by the copy of the title to Don John McQueen, and that such as hold a title paper in that form have acquired irrevocably the right of property.

This title to McQueen is printed in volume 8, American State Papers (p. 280), a part of the report of R. K. Call to Congress, and is found on pages 168–169 of the record in this case.

The evidence of the laws existing in the province authorizing grants of land furnished Garrido is confirmed by the report made by Spain at the request of this Government and printed in 2 White's Recompilation (p. 363

et seq.), and, as stated in 15 Peters, 333, was recognized as authority in the Wiggins Case (14 Pet., 351).

In Report No. 3, page 283, volume 4, American State Papers (Duff Green ed.) (the report to which were attached the six cases of which the Fish claim is one), cases Nos. 13 to 18 embraced in the Arredondo grant were omitted from the printed list, but of the other 14 cases of the 20 cases reported as founded on real titles, every one of them but Nos. 10 and 20 has the royal title printed. (Pp. 443 to 465, vol. 4, American State Papers, Duff Green's ed.; pp. 665–695 G. and S. ed.)

In these twelve cases the title papers all conform to the form given in the title to McQueen, and so will every case of a real title found in the archives.

Of the cases before this court, the case of Clark (8 Peters, 436) sets out in full the grant (concession) and the title of property (royal title), pages 440, 441, and the *indices* of a title in form are recognized in this court in *United States* v. *Castaid* (12 How., 440, 441).

But appellants did not rest with this record evidence of the form of a concession and royal title, but introduced cumulative evidence abundantly proving that in East Florida two distinct forms of title papers were issued upon a grant of land: First, a decree of concession, and, second, the real or complete or absolute title; that the originals of these title papers were issued from separate and distinct offices, and there filed, copies being given the grantee; that the decree of concession was a loose paper, but the real title more formal and bound in books and indexed. (See pp. 170, 171, and 177 of record.)

The master reported: "Nowhere is found any set form of language under the Spanish laws or ordinances in force in the province, or even according to the customs and regulations, by which any grant was necessary to be evidenced or lands conveyed. * * * It was sufficient, therefore, to constitute a complete grant * * * that the governor should by his order and decree designate by some *fit* language that certain specified property was given to the person therein named as grantee." (Opinion of master, p. 70 of record.)

The above is utterly at variance with the evidence in the record and the law. The form is given in the grant to McQueen, as before shown.

In the report of the land commissioners, dated January 31, 1826, from volume 4, American State Papers (p. 276 Duff Green's ed.; p. 563 G. and S. ed.), a part of which was offered in evidence by appellees, the distinction between the royal title and the concession is pointed out in these words:

> A royal title is the highest order of title known to any law, usage, or principle in the province of East Florida. Titles of this description were designed to convey the fee simple to the grantee; they were usually made by the acting governors *in the name of the King;* they *recited the grant to be in perpetuity*, and also the specific metes and bounds of the land. * * * This title may be said to correspond in character with that of a patent issued by our Government. Concessions without conditions are understood to differ from royal titles only in this, that most of the latter recite the metes and bounds, whereas the unconditional concession, though definite in quantity and location of the land, is still

subject to a survey, which, when made, *was followed up by maturing the concession* by a royal title. * * * *There is also a peculiarity in the phraseology of a royal title.* In all the grants of this nature the legal right to grant the lands is asserted. (Page 123 of record for the concluding paragraph, the other part being omitted from the evidence.)

Appellants have piled Pelion on Ossa in proof that this Fish grant was but a first concession. The evidence proves the custom to have been, first, a petition for a grant, with a second petition asking for a title in form; second, that when the title in form was issued express words were used. This is the almost invariable form: "Wherefore, agreeably to the sovereign will, I have granted, and in the name of His Majesty, whose royal justice I administer, I do grant ———, the said ——— acres of land in absolute property, and by these presents I deliver him the corresponding title, by which I separate it from the royal domain;" third, that the grant is in the name of the King; fourth, the grant itself declares a segregation from the royal domain. See remarks of Chief Justice Taney in *Fremont* v. *United States*, 17 How., 542 (15-244).

See testimony of Alverez in *Wiggins's Case* (8 American State Papers, 271), that the grant on the memorial was deposited in the archives; that when the governor decreed a royal title the decree was transferred into another office, but if no royal title, the decree remained in the office where first deposited; that to obtain a royal title a *second memorial* and *decree was necessary;* that when a party got a decree for a royal title he took it to the escri-

bano, who drew out the royal title in a book, and the governor signed it; that the royal titles were bound in large books and indexed; that the concessions were not issued from a book, but marked and filed away in the loose sheets in which they were made in bundles; that the title from the King in full property was conveyed only as above stated (pp. 165–166 of record).

From the report of land commissioners dated January 20, 1829 (vol. 5, American State Papers, 372; vol. 6, p. 97, G. and S. ed.), "there were two offices under the Spanish Government, the escribano's, which was regularly kept in books. * * * It seems to have been the place where all grants were recorded when fully matured. The other where the papers were in loose and detached sheets, making it easy to have a forged document thrust among them without the power of detection. This is the office where memorials for lands, with the inchoate decree of the governor, were first thrown, and it does not appear to the board that these first decrees do in any case amount to a grant. * * * Then it was that the documents were all transferred to the office of the escribano, fairly written out in a book of reference and entitled to the fullest confidence; but the loose papers, the first memorials and decrees, * * * do not seem to convey any title, or to have been considered any record (pp. 170, 171 of record). See testimony of Segui, Clark's Land Laws, page 1023; pages 176, 177 of record; testimony Perpall, page 1027, Clark; page 178 of record. See Royal Order, November 20, 1790, Clark's Land Laws, page 997; pages 181–182 of record; Order of Quesada, page 994, Clark; page 181 of record.

At the time the Forbes grant was pending in this court, a claim for 1,000,000 acres, this Government applied to Spain for a list of all grants issued in Florida. This was furnished as to grants in West Florida, and is now in the State Department, and the accompanying papers are printed in 2 White's Recompilation, pages 338–391. On page 341 it will be seen that it was also the custom in West Florida to register the complete title in books. The master says appellant's contention that this distinction existed is mere assumption, unsupported by proof (p. 74 of record); yet the testimony of Alvarez, the old Spanish keeper of the archives, is set out directly to the contrary (p. 165 of the record). See argument of Mr. White in Perchman's Case, (7 Peters, 78). See Report of Register and Receiver (p. 171 of record). "Then it was that the documents were * * * fairly written out in books of record." That the first document in the grant gave but a possessory right, see Governor White's report in Dupont's Case (p. 353 of record).

Although this evidence above referred to was in the record, the master has reported, "The grant was perfect in itself; showed clearly the intention to grant the *lands* absolutely. * * * The master therefore concludes that the grant was a complete grant in form, and not an incipient or inchoate right, which required further action of the Government in order to perfect it" (p. 71 of record).

Upon this finding depended the whole case, and it would seem its importance demanded that it be fortified by evidence of law or custom, or otherwise by the language of the grant.

The answer not only put in issue the title of complainants, but averred that the bill set out only a first concession, and that the grant to Fish was not in the name of the King, etc. (paragraphs 26–30, 31 of the answer, pp. 22 to 24 of record).

Appellees were bound to prove the averment of their bill that the lands were granted by the Government of Spain to Fish—that is, that an absolute right of property existed in Fish at the date of the treaty.

As above stated, they make no proof outside of the words of the alleged grant and its accompanying papers. They first assume these to be genuine, and then making them evidence by this assumption, they assume their effect, and say, "This grant (the paper itself) showed clearly the intention to grant the lands absolutely." We contend the law and evidence demonstrate to the contrary.

Fortunately, in addition to the authorities cited as to the law and custom existing, there is set out in *Clark's Case* (8 Peters, 436) the first decree as well as the complete title in form.

Now, a fair test of whether the opinion of the master is correct, or whether, as contended by appellants upon authority cited, the form of this alleged grant by Morales was, if genuine, that of a concession, is to compare it with the form of both a first decree and also of a complete title.

Take the decree and title in *Clark's Case* (pp. 440 to 443 of 8 Peters). Clarke in his petition prays not for possession, as Fish does, but for "a title of property" to the land which he designates as situate on the western

part of the St. Johns River, above Black Creek, at a place known as White Spring. The petition is dated March 16. On April 3 what is described as a "grant" is made in these words, according to the translation: "It is granted to the aforesaid Don George Clarke the 5 miles square of land that he solicits, of which a title shall be issued," etc. (The title was issued upon application to the secretary of the governor on proof of survey, etc.) (See case of Kingsley, p. 660, G. and S. ed.; p. 440, Duff Green ed.; vol. 4 American State Papers.)

Now observe the form of the title of property. First, it is so entitled upon the document itself, then it recites the authority for the decree, and that a decree of grant has been made and the record thereof in the archives; then it makes the formal title in *the name of the King* in absolute property, declares it to be a competent title, and recites its effect as a complete title, and finally the execution thereof by authority of the sovereign will.

Does the alleged grant to Fish in any respect resemble the real title here set out? Not at all. It is similar to the first concession, only not so clearly a concession of the land, but a mere possessory right.

This matter is of such importance that the court will indulge counsel to further illustrate the character of the alleged title papers by a comparison of the same with a grant declared by this court to be an incomplete concession in the *Marvin Case* (3 How., 620–624). The claim of Judge William Marvin was based upon the grant to Bernado Segui made by Govérnor Estrada on the 20th of December, 1815. The petition prays for a grant in absolute

property of the 7,000 acres at Buffalo Bluff, between Dunns Lake and Horse Landing, and the translation of the governor's order is "let there be granted to him in absolute dominion the 7,000 acres of land which he petitions for under the boundaries which he points out," and on the 10th of September, 1818, the public surveyor certifies that he made a survey and plat of the tract. Vol. 3, American State Papers, pp. 752, 837, and 894 (G. and S. ed.). Yet this grant, in which the language is immeasurably more to be taken as a conveyance of an absolute title than that used in the alleged grant to Fish, is declared by Mr. Justice Catron to be "a concession in the first form."

It is further to be noted that, as with the Fish claim, this grant was recommended to Congress for confirmation, yet Judge Marvin, the successor of Judge Bronson, who, as judge of the district court of Florida, adjudicated the cases under the act of 1828, and one of the ablest jurists connected with the history of Florida, deemed it necessary to bring his claim before the courts under the provisions of the act of Congress, and upon his failure to secure an adjudication of the claim admitted the obligation to present the same under the act of 1860 to the register and receiver under section 2 of the act, and finally to Congress for confirmation, rather than bring the same before the courts as a perfect title under section 11 of the act.

> See act of March 3, 1873, vol. 17, p. 771, Statutes. Land laws, local and temporary, vol. 1, p. 699.

If the form of title used for complete grants of land were exceptional there would be some ground for the

master to report that the grant to Fish was a "complete grant in form;" but, as the authorities cited on page 93 of this brief show, the reports of the land commissioners are filled with copies of titles which are complete grants in form, and all of them correspond with the form on pages 441 and 442, 8 Peters, and do not correspond with the form of the alleged grant to Fish.

There seems never to have been any doubt by the courts as to the form and effect of an inchoate grant in the days when these cases came before them. Beside the case from 2 Florida, page 81 et seq. (p. 91), the Louisiana cases are numerous in which it is laid down in the most explicit terms that a concession and order of survey with a delivery of possession did not convey any title without the issuance of the real title; that the grantee became the owner only after the real title, completed with all the formalities prescribed by law, had been delivered to him.

Purris v. *Harmanson*, 4 La. An., 421.
Flertas v. *Mayor et al.*, 1 Martin, N. S., 431.
Lobdell v. *Clark*, 4 La. An., 99.
Portalba v. *Copland*, 3 La. An., 86.

The averments of the answer that appellees' title was but the first concession (if the papers were genuine) were proved, and appellees made no attempt to overcome the evidence adduced on this point or to explain the absence of the title in form; yet the court was advised that the alleged grant to Fish in evidence was perfect in itself, and conveyed an absolute title to the lands, and this report stands confirmed by the court, which is error as assigned.

The petition of Sarah Fish to the board of land commissioners:

Sarah Fish sets forth a claim of title to the island in front of St. Augustine called Anastasia, running 18 miles south, as the property of her husband in 1763; that in 1792, at a judicial sale, her son acquired it by purchase; that a reservation was made of a certain part of the quarry existing on the island for the stone for repair of the public works by "the Spanish Governor Quesada, or his deputy, Morales, from the indisposition of Governor Quesada;" that the part so reserved has always been known by the name of the King's quarry, "and begins at what is called the King's road, to the south and as far as a small distance to the north of the light-house; east and west no farther than where the quarry ends, as appears by stakes, and if not taken away were planted at the delivery." The proof she alleges is "the annexed vouchers, delivery of the island, and a receipt for the purchase money." (Pp. 125–126 of record; vol. 4, American State Papers, p. 465, Duff Green ed.; p. 697, G. and S. ed.)

It will be seen that this description of the grant has been adopted in the bill of complaint, and this is the grant the bill avers was ratified and confirmed by the United States by treaty.

This petition was filed within less than three years after the change of flags, at St. Augustine, where the archives and witnesses existed. Yet this petition, obscure as it is, contains the only evidence in the whole

record by which to identify any particular lands. From beginning to end of the title papers the island of Anastasia is but twice mentioned—once in the testimony of Solano and once in the proof of boundaries—and in both cases the language indicates it to be a well-known island, and speaks of the place of the Orange Grove as "*in* the island of St. Anastasia." (Pp. 128 and 138, respectively, of record.)

Appellants introduced in evidence the report of Governor Cespedes to the King, dated A. D. *1787* (p. 346 of record), in proof that Anastasia Island had a distinct, well-known name, as also that it was of sufficient importance to be the subject of a report to the King; yet neither Fish, the applicant, nor Morales, nor any other alleged official of the Government makes mention of Anastasia Island in connection with this alleged grant.

This omission to mention the island by name is significant, and confirms appellants' contention that there was but a mere possessory right sought or granted, if the papers are genuine, attached to the ownership by Fish of the Vergel plantation on Fish's Island.

The original petition of Fish sought only a possessory right. This petition is dated December 2, *1796*, and sets forth that at the auction of the property of his father he bought "the place called the Orange Grove" for $1,700, "only for the fruit trees and the wood *which is on the land belonging to it*." Therefore he "prays to be declared the owner of the lands his father possessed annexed to the place of the Orange Grove," which, he says, amounted to 10,000 acres, according to *deeds granted during British occupancy*, as Solano and Leslie can testify.

The prayer of the petition in Spanish is "suplica á V. S. encarecidamente se degne declazarle *dueno* de las tierras," etc. The word dueno does not signify the owner in absolute property. It applies to a right to control, or a limited right. There are certain well-established facts to be noted with reference to this petition to learn what was sought—whether a mere exclusive right to use the land for wood, pasture, etc., or a grant of the fee.

The form of the petition differs from all seeking a grant. Of the great number appearing in the land commissioner's reports, none fail to describe the particular lands desired and to pray that not the possession, but the land, be granted the applicant.

Next, the subject-matter is to be considered. Anastasia Island was the defense of the city of St. Augustine. It commanded two harbors—that of St. Augustine and Matanzas. On it were two fortified places, where the Spaniards kept small garrisons—one at Matanzas and one at the north end of the island. In 1787 Governor Cespedes made this island the subject of a report to the King, describing its forts and quarries and giving its name (p. 346 of record). Within view of the lands were the archives, in which were kept the maps and plats of private grants and every title issued to lands. The governor's residence overlooked the island.

Can any person be so deceived as to believe that Fish was asking a grant of the island of Anastasia and its 18 miles of seacoast and river frontage in absolute property?

The master reports that Fish prayed to be put in possession by "virtue of his father's title and possession, which he claimed in *old Spanish times*, before the English occupation of Florida" (p. 53 of record). There is no evidence that the father of Fish claimed a title. The report of Governor Quesada of the auction sale of Fish's estate says it was not known by what right he occupied the land. (See American State Papers, vol. 4, pp. 728 G. and S. ed., 486 Duff Green ed.; Case No. 6 of Report No. 6, Gabriel W. Perpall, for 640 acres.) Fish says, according to deeds granted in the time of the British possession, the lands annexed to the Orange Grove amounted to 10,000 acres. According to what deeds? If he desired to be declared owner of Anastasia Island except the public lands, why beat about the bush, attempting to make 10,000 acres of land annexed to an orange grove of 540 trees, less than 3 acres? Why not produce the deeds, either those which he mentions or those which the master finds his father claimed title under. It will be found from the records of the land commissioners (vol. 3, p. 774, G. and S. ed., American State Papers) that Sarah Fish, in her first memorial, presented to the board on September 8, 1823, set up title based upon an order of sale made by the governor a receipt for the purchase money and "an instrument purporting to affirm the sale," and the master throughout his report appears to assume that the title papers offered are but a continuation of the proceedings had in the auction sale ordered by Governor Quesada, whereat Fish purchased the place of the Orange Grove.

Appellants contend the record shows neither a sale nor a grant of Anastasia Island and absolutely no evidence that Fish, sr., had been granted the same, as reported by the master. (See p. 71 of record.) The petition of Fish dated March 22, 1792 (p. 134 of record; Am. State Papers, pp. 469 Duff Green ed., 701 G. and S. ed.), admits he bought the island of the Orange Grove (Ysla del Bergel), "the *place* which his father inhabited," and the *said island* being abandoned (y la de hallarse dha. Ysla abandonada), he asked to be put in possession of it. Now if, as shown, Anastasia Island was an island of public notoriety, could it be possible it was the property referred to as "Ysla del Bergel?" Yet the master so finds. Again, if the purchase at auction was the basis of the grant, why were not title papers made by the governor, as in the case of Bartolome Sintra (pp. 362 to 366 of record) and the case of Travers and many others, purchasers at the sale.

Note the closing words of the petition of December 2, 1796. Fish says if his request is not granted he will consider himself at the greatest loss of the part of his purchase. Is this language reconcilable with the theory that he was asking for the magnificent grant of the whole of Anastasia Island, 10,000 acres, as annexed to the place of the Orange Grove, which he says in his petition of March 22, 1792, he had bought? It is in evidence that until A. D. 1816 the largest grant ever confirmed by the Spanish authorities to any individual for any purpose

was for 3,275 acres. (See report to Congress of R. K. Call, pp. 157 and 158 of record. See list of all complete titles ever issued by Spain, in evidence, pp. 159 to 164 of record, printed in vol. 8, American State Papers, p. 261 et seq.)

Yet the master assumes that when Fish says he will consider himself at the loss of the greater part of his purchase if he fails to obtain the grant he prays for, he has reference to an absolute grant three times larger than had ever been made in the province of Florida and of land commanding the defense of all the Spanish possessions in Florida and two harbors and containing 18 miles of seacoast and a like frontage upon a navigable river. Fish's petition, whatever it prayed, was referred to the assessor-general. The report of Ortega declares that the matter is beyond his jurisdiction, but the governor may grant Fish lands as a new settler, and upon proof that his father had a possession he would have a preference. The report is important in one other respect, namely, it appears that the notary, Zubirazetta, had made statements to Ortega as to what Fish bought at the sale, which statements nowhere appear in the record. In fact, this notary, Zubirazetta, appears in evidence throughout the proceedings with great prominence; and in view of that fact, in connection with the mutilation of the papers, it may not be an ungrounded assumption to say that if there had been no Zubirazetta, the title papers and the case would have ended when Governor Quesada made his last order, dated March 26, 1795 (pp. 132, 133 of record).

Fish is allowed by the governor's order of December 15, 1794, to make the proof of his father's possession, and proceeds to make what must be admitted to be a most remarkable record to present to the Sub Delegate of the King of Spain having the control of the public archives of the province, in respect to lands under his very eyes.

The proof: Leslie says he valued the properties of Fish, sr., and among them was the *plantation* called the Orange Grove, and it is known to him he (Fish) had the 10,000 acres of land, which he possessed with *lawful titles given in the time of the former Spanish Government.* It must be upon this testimony the master bases his report that Fish prayed possession by virtue of his father's title in old Spanish times, but this testimony is not only not evidence, but when it is considered that the plantation named the Orange Grove was directly opposite St. Augustine, and that the witness says he valued the lands, houses, and lots of Fish during the English occupancy, followed by the general statement that he knew he had the 10,000 acres of land with titles given by Spain, without giving anything to identify the particular land, the whole proceeding is rendered improbable, especially when it is known that the British titles had to be recorded and recognized by Spain, being forfeited by the treaty between Great Britain and Spain, and when it is further considered that no grants of land are found to have been made prior to 1763 by the Spanish.

Llanes says he saw Fish in possession of the Orange Grove with a little more or less than 10,000 acres, which

he knows he possessed with lawful titles from the old Spanish Government.

Witness was born in 1750, hence was 13 years old when Great Britain took possession. Neither witness makes the least allusion to Anastasia Island, right under their eyes, when they gave their evidence.

Solano, born in 1749—therefore 14 years old when Spain delivered the province to Great Britain—says he went by command of the governor in the time of the old Spaniards to separate the quarries *in order to grant the remainder* to Fish, who solicited it, and after twenty years of British possession, with the Government engineer (in A. D. 1786), he set out four stakes to mark the King's lands, and Fish was the *owner* of the rest. Even this obliging witness does not attempt to make the possessions of Fish, sr., embrace Anastasia Island, only a plantation called the Orange Grove *in* Anastasia Island, at which plantation Fish possessed 10,000 acres of land. Now, let us see what credibility can be attached to the proceedings. We contend that the character of the alleged testimony is such as to prove it spurious.

The ages of the witnesses at the alleged period of the events disprove it; the fact that they should attempt to make out the area by such proof while at that very time there was a public surveyor (Eastlake, appointed by the King, and after him Pedro Marrot, see page 998, Clark's Land Laws); that one year after, Solano says he helped the engineer, de la Roque, lay off the quarries and "set up four stakes to mark out the lands of the King" on said island and "Fish remained owner of the

remainder," we find the Spanish governor, Cespedes, making this island a subject of a special report to the King without a mention of Fish or his alleged possession. (See defendant's Exhibit No. 23, pages 346–347 of record.) Further, as said, no grant of lands by Spain has been found dating prior to the British occupancy.

Exhibit No. 23 is a copy of a paper found in the Spanish archives at Seville and is verified by the witness Abbie M. Brooks as copied by her.

Assuming for the instant that any governor would have submitted to three such witnesses the question of a right in any private person to so large and valuable a part of the public domain when the archives containing a complete record were accessible, yet the very title papers themselves offered in evidence contain earmarks fatal to a belief in their genuine character.

The papers are written upon double sheets of paper, folded, like sheets of letter paper or foolscap, in the middle. The proof of Leslie (p. 468, American State Papers) is page 3 of title papers and covers the front of page 3 and two-thirds of the back of the same sheet—that is, if two sheets of letter paper were used and each page of the second sheet numbered, beginning with page 3, the proof would be on pages 3 and 4. The proof by Llanes follows Leslie's, *on the same* page where Leslie's ends, but the date of Leslie's, the first in sequence, *is September 22, 1795*, while the following, *on the same page*, is February 10, 1795. Of course it might be possible that such an arrangement of the testimony

could be made and just space enough left on page 3 for the subsequent testimony of Leslie, and Llanes's testimony then written, but it is extremely improbable. This is almost conclusive proof that the title papers at most are a copy of parts of certain originals not found in the archives.

On February 12, 1795, that is, seven months before the date of Leslie's testimony, there is what purports to to be an order to refer the petition and proof to the royal collector for report. The improbability of such a reference of such testimony is great, but if the signature of Quesada had been proved this objection would have had no weight, and is not material to the case of appellants, for on February 27, 1795, the collector reports that Fish had no right to any more land than is proved by the inventory to have been sold at the auction. He adds that in order to settle the matter, to make the record permanent, with reference to any rights Fish may claim as a new settler, and also in the interests of his father's creditors, the governor should order to be attached to the petition and testimony a copy from the archives of what was inventoried, valued, and sold to Fish at the auction sale. The controller advises the governor that, under the law, he finds no reason why Fish may not receive a grant of land as a new settler (Y en caso que Don Joseph Fish necesite tierra vea lengat sin perjuicio de tercero no halla el Ministro fiscal reparo alguno en que V. S. se las conceda como nuevo poblador arreglado á lo que S. M. tiene mandado sobre este particulardo.) The

court will observe, and the Spanish is here quoted, that it may observe, that the comptroller limits the governor's power to the King's commands, showing that grants in Florida were regulated by law, and not by the unlimited discretion of the governor.

By a formal order, subscribed as the subdelegate of the King, Quesada directs that the copies of the proceedings had in the matter of the auction of lands of the estate of Fish, senior, be made and attached to the petition of Fish, and the whole referred to the assessor-general, "that he may consult with me as to what is proper in respect to *the other points*" to which the fiscal refers. What other points? Why, there can be but one answer: The right of Fish to a grant of land as a new settler, whether or not he came within the class directed by the King to be favored, and, as we shall show later, whether or not the concession already made to Fish in A. D. 1791, for 500 acres (Exhibits 13, 14, 15, and 16, pp. 319 to 338 of record) did not preclude Fish from a second grant. No unprejudiced mind can doubt the meaning of this order.

In accordance with Quesada's direction, a copy from the archives of the auction proceedings is attached to the petition and proof. These proceedings are important in that they show that Fish paid but two-thirds of the appraised value of the Orange Grove; that the auction occurred January 31, 1792, and that he (Fish) signed with the governor the formal proof of his purchase of the Orange Grove. At the end of the proceedings, of

date April 19, 1792, is the formal receipt for the purchase money (p. 141 of record). After the copies from the archives is a certificate of the notary. Below the notary's certificate the governor and the assessor-general indorse thereon an order dated March 26, 1795.

This order, properly and reasonably construed, settles absolutely the claims of appellees. The order as translated is, "Having been seen it was passed over to Don José Fish" (pp. 132 and 133 of record).

The Spanish is Vistos; Traslado a D. José Fish. The Spanish word traslado has a special signification with reference to legal proceedings. It will be observed this is a final order, signed in solemn form by both the governor and the assessor-general, with full and detailed recitation, notified to the collector; and, as the notary's certificate declares, the foregoing *decree* was made known to Fish. In the title papers it ends double-sheet 6, on the back of page 12.

Appellants aver and maintain, first, that with this order ends all that is genuine of proceedings by any authorized Spanish official; second, that the decree was a final rejection of Fish's claim to be declared owner of 10,000 acres as annexed to the Orange Grove; third, that it was the conclusion of any claim or proceedings based upon the sale to Fish, the payment or receipt of purchase money, and any right by virtue of the possession of his father, and the papers were returned to Fish. (See remarks of Chief Justice Taney in Fremont case, 17 How., 542, as to concessions not being recalled, and see report of Land Commissioners, p. 171 of record.) Appellees and the

master simply ignore this decree and the contention of appellants, and intermingle all the proceedings, or rather they ignore the next petition of Fish to be granted lands as a new settler, and base all subsequent proceedings upon, and make them a continuation of his first petition; and they assume authority in Morales to revoke the commands made by Quesada upon the claim. No consideration is given by the master to the fact that with this decree ends Quesada's connection with the proceedings, and the fact that the governor's signature fails to appear upon any subsequent paper is accounted for by the master by the following findings of fact:

"The master finds as matter of mixed law and fact that Don Juan Nepomuseno Quesada was Spanish governor of East Florida from the year 1792 to *1795* (??); that from the *16th day of May, 1795, up to and including the 17th day of June, 1795, Bartolome Morales was the political and military governor* of the province of East Florida pro tem., then under the dominion of Spain, invested with full power as such to discharge and exercise all the duties and powers of said office, and so held and recognized by all the officials of the province (p. 59 of record); and in his opinion he goes yet further and reports: "At this time (the date of the final decree of March 26, 1795) it is evident that the governor became ill, *so as to be unable to discharge the duties of his office*" !!! (p. 69 of record). After diligent search, counsel for appellants has been unable to find in the record any evidence to sustain these findings of fact by the master, and respectfully submits that his exceptions thereto should have been sustained.

After the decree of March 26, 1795, when, as we contend, by the custom prevailing, *the original papers, with attached copies, had been returned to Fish*, Fish files a petition as *a new settler*, praying a grant of "the said island." This petition has no date—a suspicious circumstance when it is seen that it begins a new leaf of the papers (p. 13) and the governor's name never again appears in the proceedings.

Appellants contend, first, that the grant was asked to be made to him as a new settler; that is, in conformity to the laws and regulations for grants of lands to new settlers; and, second, that the grant prayed for was a possessory right for use for wood and pasture, and not in absolute property.

The form of the petition sustains appellant's contention. It will be observed that it contains no mention of Anastasia Island; that it sets up his father's possession of the grove, saying that the fiscal limits him to the space of the Orange Grove which he purchased, from which the revenue is not sufficient for his support.

In considering the petition the court should not lose sight of a fact ignored by the master, that there existed at the time, in the province of Florida, laws and regulations governing the granting of lands to new settlers, the cardinal features of which were that lands might be granted for settlement to those persons entitled thereto under the law and in certain limited and defined quantities; that all grants carried with them a condition that the settler would at the end of ten years make the required proof of cultivation, his head rights, etc., and that the first grant was a mere concession, not conveying

other than a possessory right, and of no validity as a conveyance of title until consummated by a title in form. "It does not convey a true title to the property" (p. 353 of record). That such was the law is proved by the authorities cited on pages 92–95 of this brief, and also the Exhibits Nos. 13 to 15. See pages 337, 338 of record, and Exhibit No. 24, report of Governor White to the King (pp. 353, 354 of record).

See report of register and receiver (p. 171 of record), where they say "the first decree in no case amounted to a grant, but gave applicant a bare right to settle. This is no record and conveys no title" (testimony of Clark, p. 180 of record; testimony of Alvarez in Wiggins Case, p. 165 of record). "To obtain a royal title, a second memorial and decree was necessary."

Such portions of this evidence, of which he should have taken judicial notice which established custom and law, that he did not reject as irrelevant and immaterial, the master seems to have overlooked.

But even this second petition, if the papers be proved to be genuine, was rejected, and the comptroller says the fiscal was right and that Fish bought nothing but the Orange Grove. He says "the reason of the fiscal attorney in his opinion of February 27 last is well founded, in considering Joseph Fish as owner only of the land and trees which the said valuation occupy, which is what was lawfully sold at auction." What would destroy all belief in the genuineness of the papers, if we should hold with the master that a title in absolute property was prayed for

and was under consideration, are the recitations of fact in this alleged report. It is beyond belief that one of the chief officials of the King of Spain should, over his signature in an official report to become part of the archives, declare his belief that by the proof in this record Fish had proved "that the site named the Orange Grove consisted of 10,000 acres," and that Fish when he bought the grove believed that 10,000 acres of land would be included in the sale, "because separating the land occupied by the fruit trees (10 acres at most), the remainder is not fit for planting," and that he should advise the governor that for the reason given above the governor might order that the boundaries of Orange Grove to the extent of 10,000 acres of land might be marked off.

Why, the bill declares that the whole of Anastasia Island contains but 7,500 acres of land (p. 1 of record), and, as before stated, Pedro Marrot was living in sight of the lands, "appointed by the Government, with the assent of the council of ministers, to proceed to survey and lay off the lands, which is to be executed by order of His Majesty" (p. 998, Clark's Land Laws), and this Marrot had by public order of October 24, 1791, made regulations for the survey and record of grants of land made.

It is further to be considered that in 1791 Governor Quesada publicly declared that Fish had left the province of Florida, and that under the law he could not inherit the property left by his father. (See title of Bartolome Sintra, p. 365 of record; deed to Travers, 4 American State Papers, p. 486, Duff Green ed.; p. 728, G. & S. ed.) Quesada says Fish, sr., was an Englishman, and

his wife is shown by the testimony of Ann Furman (Ex. B, p. 235 of record) to have been of American birth.

But if we are credulous enough to assume these proceedings to be genuine, and that Fish sought a grant of Anastasia Island which he had up to this time strictly refrained from asking, yet appellees' contention of a grant of title is not aided, for the Comptroller merely advises that he bought nothing but the grove, but that the bounds may be marked to the extent of 10,000 acres. Even after a decree directing the marking of bounds, and admitting Morales had power to make such a decree, it would have been necessary upon the report of the officers marking the bounds to have made a further decree segregating the lands and investing an absolute title. See the proceedings set out in the case of *United States* v. *Peralta*, 19 How., 343 (15–679).

Before he would have had any title that would pass by descent he must have obtained from the office of the Escribano a royal title in the name of His Majesty, or as the ratification of the treaty expresses it, a title "made by me or by the competent authorities in my royal name."

> Report of Saveedra to Garrido, p. 220 of record.
>
> Report of Register and Receiver to Congress, p. 171 of record.
>
> Exhibit No. 24, report of Governor White to the King, p. 353 of record.
>
> Exhibit No. 15, report of notary, claim of Jesse Fish for 500 acres, p. 337 of record.

But appellees have more serious difficulties to remove the suspicion that attaches to the title papers at this stage

of the case. This alleged report of Yguinez, dated May 4, 1795, in the title papers, according to the copies from the surveyor-general's office (Exhibit U, pp. 287–288 of record) begins on page 16 of those title papers, as the same are paged in the copy. The originals show that from pages 1 to 15, each leaf has been marked in regular sequence, the front of the leaf being numbered and the back of each leaf being not numbered, that is, what would be page 3 of this brief is page 2, and what is page 2 of this brief is blank, or in other words taking a sheet of foolscap paper, the first page of the sheet would be marked 1 and the second half of the sheet, or its 3d page, would be marked 2. The certificate of Zubarrizetta, dated April 20, 1795 (p. 469 of Duff Green's ed., and page 701 of Gale & Seaton's ed., American State Papers; p. 287 of record), ends on the reverse side of page 15 of the document, what should be page 16 is found to be a blank page, with the left half torn off, the sheet is severed in the middle, and the next paper attached is numbered page 16. It is in evidence, and the custom is so universal that to be otherwise is the exception, that it was the rule in matters presented by petition to the governor, that his indorsement was made upon the left-hand side of the last or blank page of the original paper, covering from one-third to one-half the sheet. This was the case with the petition of Fish (Exhibit No. 13), the concessions to Rodriguez and Sanchez (Exhibits Nos. 17 and 18). (See report of district attorney for Arkansas Territory; vol. 6 American State Papers, p. 130, G. & S. ed.)

Appellants contend that this mutilation, coming, as it does, after this second petition of Fish, in which he recites

that the proceedings theretofore had had been delivered to him (que se me entregarron dhas. diligencias para contestar el traslado que se me confiere de la representacion del Sor. Fiscal), is evidence that an unfavorable indorsement had been made upon the original papers, and that such mutilation was fatal without explanation.

How is this evidence of mutilation met by the master? This is his report:

> As to the copies from the surveyor-general's office, it was objected that such copies and the originals on file * * * showed that they were mutilated, the half sheets being torn off in many places; that some of the papers bore date subsequent to the date of the decree of grant. Testimony by the defendant was also introduced, as tending to show the customs and regulations of Spain in regard to the form in which the orders were made in such proceedings, and that the watermarks in the original papers were not all alike, but the testimony of the defendants failed at best * * * to cast more than a suspicion of *immaterial irregularities*, and fell far short of overcoming the presumption of validity and genuineness that attaches to such documents produced from the public archives of the country, properly *verified by the keeper thereof*, and the authentic compilation of the same in the American State Papers (p. 66 of record.)

Again he reports:

> The proceedings *bear on their face every stamp of genuineness;* the *testimony* shows they were known and officially participated in by all the members of the governor's official household." (P. 74 of record.)

What testimony? Not one of the papers was required to be proved, and their genuine character is based wholly on assumptions.

Was there a presumption of authenticity; and if so, was it not rebutted? First, as to the copies printed in American State Papers, as before stated, there is no evidence that the land commissioners ever saw the originals. The certificate of the secretary of the board is that "the foregoing is a correct translation of a document on file in the archives." The documents produced have no file mark. The proceedings of the board may be searched in vain for evidence of proof of execution of a single one of these papers, and yet there must have been many witnesses living in St. Augustine familiar with the signatures of many of the officials, purporting to be affixed to the several papers, and possessing information of the watermarks to be found in the paper used at any given date.

Further, it was a suspicious circumstance that this claim had been presented to the board appointed by Congress to investigate, or, as set forth in Sarah Fish's petition, "to try the validity of land titles," and had secured a favorable report, yet the claimants alone of all cases coming to the knowledge of counsel refrained from submitting their title papers to the scrutiny of the court, as required by the very law which gave validity to the action taken in their case by the board before which they had appeared. It will be found from an examination of the reports of cases adjudicated under the act of 1828 that the court required proof of the execution of the grants presented.

Unless the title papers in the case at bar are admissible as ancient documents, proof of the execution of the alleged grant should have been required. (*De la Croix* v. *Chamberlin*, 12 Wheat., 599–603.)

The mere presence among the archives, without file mark, can not be considered, for the reason set out in report of the board of land commissioners, No. 3, of January 20, 1829 (vol. 6, American State Papers, p. 97, G. and S. ed.), where it is said "it is a matter of history that the papers now deposited there (in the archives) were most loosely kept and guarded, and it was a matter of equal facility to take a paper out or smuggle it in" (p. 170 of record); also the report of Alexander Hamilton, before cited, that a grant for a small area was withdrawn and a grant for a large area smuggled in in its place. (See also report of General Jackson, p. 901, vol. 2, American State Papers, "Miscellaneous.")

Mr. Greenleaf says, "an ancient deed * * * having nothing suspicious about it is presumed to be genuine without express proof. (1 Green. Ev., sec. 144.) In Phillips on Evidence (4 Am. ed., A. D. 1859, vol. 2, p. 481 of the text) the rule as to the admission of documents in evidence, without proof of the execution, is qualified by declaring that they must be free from the suspicion of dishonesty, and in note No. 430 (Cowan & Hill) the editors say, "Peake advances the doctrine thus: A deed of over thirty years' standing requires no further proof of its execution than the bare production, provided * * * there is no apparent erasure," etc. * * * In these cases

(where on its face erased or interlined) it will be incumbent on the party to give the ordinary evidence of the execution of his deed, for the presumption from the antiquity of the deed is destroyed by the opposite presumption * * * that some unfair alteration has been made in the deed," and the editors sum up their conclusions as follows: "Strictly speaking, we apprehend no instrument however ancient can be said to prove itself. All that we understand from the rule on this subject is that when an instrument appearing on its face to be thirty years old is produced its authenticity may in certain cases be presumed, not from anything belonging solely to the instrument itself, but mainly from circumstances out of it, the existence of which like other facts *must be shown on the trial.*" (Phillips on Evidence, 4 Am. ed., p. 476.)

And further, "It is agreed by all cases that where the alteration appears to be suspicious and is not duly noted, as if *the paper has been cut*, or a mutilated figure left, or the ink differ, or the handwriting be that of a holder interested in the alteration, etc., *the onus is on the party* who claims that the alteration was genuine." (1 Phillips on Evidence, 4 Am. ed., note 177, and pp. 602 to 607.) Erasures or interlineations raise a presumption of fraud which overcomes the presumption of genuineness arising from antiquity. (*Ridgley* v. *Johnson*, 11 Barb., 540.)

Not only was there such a mutilation of page 16 of the papers preceding this report of Yguinez, but immediately following the report, immediately after the order of Morales dated June 13, 1875, "To decree more fully

let notice be given to the defender of the estate of Don José Fish, and have the proceedings returned" (p. 469, Duff Green ed.; p. 702, G. and S. ed., American State Papers), and page 18 of the title papers, the left half of the sheet had been torn off, and there was the same break in the numbering of the sheets. Appellants contend the maxim *omnia præsumuntur contra spoliatorem* applies here, yet the master says these alterations, together with the other variances, cast no more than a suspicion of immaterial irregularities, and that the papers are evidence without proof of execution or showing any facts whatever.

Appellants contended before the master and now insist that before the alleged title papers could be received in evidence without proof of execution there must exist these five prerequisites: First, the documents must appear upon their face to be regular; second, they should be proved to be thirty years old; third, they should be proved to come from the proper custody; fourth, the circumstances connected therewith should be such as rendered the existence of such a grant probable; fifth, possession, according to the description in the grant. Appellants contend that the form of the documents and also the circumstances connected with the alleged grant rendered it necessary to make proof of the alleged title papers.

The grants to Rodriguez and Sanchez were conclusive evidence that the possession according to the grant had not been had.

Jackson v. *Blansham*, 3 John. Rep., 298.
Jackson v. *Brooks*, 8 Wend., 431.

The next document in the list of papers, the report of Espinosa, the defender of the Fish estate, is important in one particular. He recites that the "well-founded exposition" of Yginez is in folio 47. Now, in these title papers—and no other papers have been produced or found—Yginez's exposition runs from folio 16 to folio 18, and hence it is apparent that the whole thing is, as appellants contend, a patched-up proceeding, containing possibly some originals, with copies and spurious documents where convenient.

How else can this statement of Espinosa be explained? Of course, if every discrepancy pointed out is "a mere immaterial irregularity," then the objection is of no weight.

We have finally reached the kernel of the nut to be cracked—the order of Morales. This order is dated June 19, 1795, a day when, as the master finds, Governor Quesada was so ill "as to be unable to discharge the duties of his office." The paper begins by declaring that Fish had proved that his father possessed in the time of the old Spaniards the 10,000 acres of land "the *possession* of which he claims at the *place* called the Orange Grove" (en el sitio nombrado El Verjel). Now, we are asked to believe that the "political and military governor of the province of Florida, invested with all the powers and duties of such office," located in the capital of the province, with the records at his command, and in communication with Havana and Spain, declared that the (former) British subject Fish had proved to his satisfaction a right as against the King to Anastasia Island by proof of possession of a *place* called the Beautiful Or-

chard, made by three persons holding no official position, and that such possession had been since the time of the old Spaniards. Did he not know that no grants of land were made in the time of the old Spaniards? The surveyor-general, Pedro Marrott, and his book "that is to serve the Government as a record of the lands vacant," is not needed in this affair.

That Fish, sr., had possessed this important island prior to 1763 and since 1784, and that the governor of the province, who looked upon it every day of his life and received daily reports from two garrisons stationed on it, is informed of the fact only by proof of one witness, who can not write his name, and two others not shown to occupy or have occupied any official position in the province, is preposterous. It must be remembered that this city (St. Augustine) was a military fortress, and every application for lands or for the privilege of building on and cultivating the lands of the Crown, likely to be of military importance, was referred to the chief engineer for his opinion on the influence which the permission applied for might have on the defenses of the city. (Report Land Commissioners, vol. 5, American State Papers, p. 428, G. and S. ed. See Grant to Sanchez, Defendant's Exhibit No. 18, p. 341 of record.)

Passing this with the consideration such a recitation deserves, and proceeding with the papers, his excellency (Morales) said:

> * * * he ordered in consequence that—
> First, whether by right of paying $1,605 for the orange grove, or, second, by right of his father's

possession, or, third, in consequence of Fish's petition to be granted land as a new settler,

"That he be *placed in possession of the said land*."

What land? That his father "possessed and is already laid off, *with* the reserve of the quarries, and the remainder which was not *granted* to his said father, and which the King has reserved."

Stopping here, what do we have? First, it must be admitted that so far there is no grant of title; at most an order that Fish be given a possessory right to 10,000 acres which his father possessed in British and old Spanish times—that is, from before 1763; and second, that from this there was a reservation of, first, the quarries, and, second, what was not granted Fish, sr., "and which the King has reserved."

Now, eliminating Sarah Fish's petition from the record, is it possible to determine the lands granted? By the rule as laid down in 3 Howard, 693 and 787, before cited, that upon a complete title recognized by the treaty this recognition extended only to the boundaries the grants themselves furnished, what lands were granted? What bounds did the grant itself furnish?

But, say the appellees, the delivery of possession is a constituent part of the grant. To this we reply that there is no evidence that any law or custom existed in East Florida for a transfer of title by concession and delivery of possession, and if such did exist they can derive no benefit from the bounds set out in the paper entitled "Proof of boundary and possession," for the bounds

there given are more indefinite than in the alleged grant. The utmost that can be made out from this paper is that going from the plantation (place) of the Orange Grove *in* Anastasia Island to where the quarries of the King *and individuals* were, the notary and party went fixing up stakes and separated the quarries. It nowhere appears what quarries, or how many, or whose quarries, and, as before said, there is absolutely nothing in the title papers to identify the lands granted or reserved, and no confirmation by the governor of the alleged delivery of possession, if the lands delivered could now be identified.

Yet the bill, in seeking to conform to the reservation described by Sarah Fish in her petition, which their witness, Mr. Sanchez, attempts to identify on the ground, has failed to conform to the description of the reservation made in the alleged grant by Morales. The reservation described by Morales is "of the quarries," and "the remainder which the King has reserved," while Sarah Fish claims all the quarries, except part of one, which part she describes as beginning at a certain road. Appellees locate, by Mr. Sanchez, this road, and then say they have established the boundaries of the reservation, and all else was granted to Fish; and the master reports that "it is in evidence that the reservation was properly marked off at the time of making the grant, but that the boundaries of the reservation have been since destroyed, so *there may be some difficulty at the present day* of ascertaining them" (p. 72 of record); also that the "reservation was at the time distinctly marked

off" (p. 71 of record). Can there be a greater confusion of reasoning? We are seeking to identify the boundaries of a reservation made in general terms by a designation made upon the grounds. This designation on the grounds says in terms, "We separated 'the reservation' from the remainder," and yet it is pretended that this is a laying off and segregation of particular lands, and the master reports, "It is simply a question of reestablishment of the boundaries" (p. 72 of record). Only this and nothing more.

But how may they be reestablished when the documents themselves contain not one particle of description upon which to proceed, and the witnesses to the location of the demarcation on the ground, if not mythical, are long since dead?

The master found that the lands reserved from the alleged grant were located east of a red line delineated on a map filed in evidence (made in A. D. 1895), beginning at a pile of stones. This pile of stones the master locates in these words: "About 40 feet east of the intersection of the roads from the Fish homestead and the King's road was, until lately, a pile of stones; about 12 feet north of this was another pile of stones, which pile of stones marked the southwest corner of the King's quarries and *the reservation in the grant to Fish.*" "The lands embraced within (east of) this line and between the old Spanish light-house and the pile of stones to the sea beach are the lands known as the King's quarries and

the lands that were marked off and reserved from the grant to Fish" (p. 55 of record).

These historical facts are interesting and of the utmost importance in the determination of the matters referred to the master, but appellants' counsel has sought in vain for evidence in this record to sustain the above findings.

Certainly the testimony of Mr. Sanchez, if the same is competent evidence, does not establish more than that he had had pointed out to him, by whom it is not known, the tract of land lying east of a line drawn between the old light-house and a pile of stones near the junction of two roads, as what was "known" as the King's quarries. He does not say at what time it was known as the King's quarries, whether before Sarah Fish so designated in her petition or not. No such designation appears in the title papers.

But appellees' own witness, Harrington, in spite of strenuous efforts of counsel to prevent it, completely demolishes the evidence of Mr. Sanchez. Harrington, shown by the record to be living on Anastasia Island, testified that the quarries were *west* of the red line of Hopkins's map (p. 148 of record).

The Coast Survey map, showing the topography of the island, delineates the roads, and the testimony of Hopkins and Colee establishes that the road running north and south runs about in the middle of the ledge of rock, and it is shown that this road is considerably west of the red line marked by Hopkins's map (pp. 117, 148–200 of record). Thus it is apparent that Mr. Sanchez has fallen into an error, probably an unintentional change of the word "east" for "west."

There can be no question about this error in his testimony, for the witness, Harrington, and others testify that east of the red line is sand to the seabeach. If there existed a rocky shore on the ocean beach along the Florida coast, it would have been a matter of public notoriety.

But if, as the master reports, the reservation was distinctly marked off in A. D. 1795, the evidences of such segregation had been lost at the time Florida was ceded to the United States. The agreement between Lieutenant Tuttle, U. S. A., and Gabriel W. Perpall in evidence, complainants' Exhibit H recites that at its date (September, A. D. 1833) a certain portion of the quarries (plural) on the island of Anastasia were claimed by the heirs of Fish, and a difference of opinion existed as to the location of the lines between the property of the United States and that which "appertains to the estate of Fish," and that the officer of the United States had called upon the representatives of the Fish estate *to point out, fix, and establish the bounds of their claim, which it was found difficult to do without great delay*, therefore it was agreed that Lieutenant Tuttle might cut stone upon any part of Anastasia Island provided *he shall not cut stone south of a stake set 298 chains and 12 links* (*nearly 4 miles*) on the road south of the light-house (p. 259 of record).

Mr. Perpall, the administrator of Fish's estate, and who appears in the reports of the land commissioners to have been a man having much to do with Spanish grants

in Florida, considered it would be difficult in A. D. 1833 to fix, point out, and establish the bounds of the reservation in the alleged grant, but sixty years later these difficulties vanish as dew before the summer's sun, and the reservation is placed on the sand dunes along the coast for 2 miles or more, east of a line located by testimony evidently in error, but founded on the memorial of Sarah Fish in A. D. 1824.

The master reported to the court "that previous to this decree and grant of 1795, the *said lands* had been laid off and segregated to the father of the said Fish, the exception of the King's quarries and reservation having *at that time* been previously separated and their boundary defined from the balance of said island" (p. 60 of record). Appellants contend there is no competent evidence in the record upon which to base this finding, but if there were, it furnishes no aid to the important inquiry what land was segregated from the public domain by the stakes set up by Solano one hundred and two years ago. Appellees can sustain their grant by a confirmation by the United States of the staking out upon the ground of a grant made, or they can rely upon their title papers without confirmation by the United States for the lands which the title papers themselves describe. They have come into court on their title papers, yet they seek by a survey to establish the boundaries of an undefined reservation alleged to have been marked on the ground one hundred and two years ago. The method of proof of the designation of the boundaries of a grant in East Florida by

delivery of possession in presence of a notary is contrary to the entire consensus of authority. This is specially important since this alleged delivery of possession was never confirmed. Even under the liberal (improvident) policy adopted by the board of land commissioners, if no certificate of a survey made under the Spanish Government was presented with the claim the board presumed the lands were never surveyed and rejected the claim. (Vol. 4, American State Papers, p. 202, G. and S. ed.)

The rule governing these grants has been often enunciated by this court. It has been distinctly decided in the Florida cases that the land claimed must have been severed from the general domain of the King by some grant which gives it locality by its terms. In such case a survey might be made after the time fixed in the treaty. (*Smith* v. *United States*, 10 Peters, 331.)

In the Buyck Case this court says if the grant were free of conditions, and proof made of its execution, still it could convey no land for want of ascertainable locality because not surveyed. (*Buyck* v. *United States*, 15 Peters, 215, p. 223.)

In the case of Acosta it is pointed out that in East Florida the surveyor-general was the authorized officer to sever the land granted from the public domain, and that he must act before the grant would be binding on this Government.

United States v. *Acosta*, 1 How., 24 (11–34).
United States v. *Lawton*, 5 How., 10 (12–35).

In the Lawton Case the decision of Judge Bronson upon the question of the survey marked by unlocated

stakes set is found on page 13, and is instructive. There a survey had been actually made, but the court refused to recognize it because not made by the duly authorized public officer, although the land had been granted in absolute property.

In the case of King the court says:

> The right of the defendant in error must stand altogether upon the instruments executed in 1795 and 1797. * * * It has not the aid of any authentic survey to ascertain and fix the limits of the land. * * * The instruments themselves contain no lines or boundaries whereby any definite and and specific parcel of land was severed from the public domain. It has been settled by repeated decisions of this court, and in cases, too, where the instrument *contained clear words of grants*, that if the description was vague and indefinite, as in the case before us, and there was no official survey to give it a certain location, it could create no rights of private property on any particular parcel of land which could be maintained in a court of justice. (*United States* v. *King*, 3 How., 786.)

In the case at bar there is no competent evidence that the lands described in the bill as claimed by these defendants are not part of the reservations made in the alleged grant. The bill says they are not, but this averment is not sustained by evidence.

In 8 How., 309, this court says:

> As Carre's claim was not surveyed before the confirmation took place, no boundaries of his tract could be recognized when the public surveys were made. * * * If from these (evidences filed with the

recorder) the tract could not be laid down on the township surveys, then the land could not be reserved from sale, although by the concession and by notice a particular spot was referred to in general terms as the place where the lands should lie. *Menard* v. *Massey*, 8 How., 309 (12–1092).

That is this case. From the boundaries in the title papers no tract could be laid down on the public surveys, and hence no land was recognized or reserved by the treaty itself. By the act of 1827, section 12, the claimants had an opportunity of removing this difficulty, if there existed a grant of any particular tract of land; in fact, they were required by that act to furnish evidence of the bounds of their claim to the surveyor of lands for Florida, and to do so within one year.

Where the documentary evidences of title produced by the claimant contain no sufficient lines or boundaries to show that any definite parcel of land was severed from the public domain, the universal rule, as settled by repeated decisions of this court, is that the concession in such cases creates no right of private property in any particular tract of land which can be maintained in a court of justice without an antecedent survey. *Maguire* v. *Tyler*, 8 Wall., 650 (19–323). In cases of vague description this court has uniformly held that no particular land was severed from the public domain by the grant and that no survey could be ordered by the courts of justice. *Villalobos* v. *United States*, 10 How., 557 (13–537). A grant unaided by a survey did not separate the land from the public domain. If it can not now from its uncertainty be located, it is not a grant for any specific lands. *Denese* v. *Ruggles*, 16 How., 243 (14–922).

But the master reported to the court:

> The land granted was an island well known and defined by name; it therefore required no survey, as the grant of such *by name* in itself sufficiently segregated it from the royal domain, and more effectually than any survey could have done (p. 71 of record).

Where in the record is there found any grant of Anastasia Island by name? If the grant was, as stated, an island well known by name, why is the grant expressed "as the said land which his father possessed," with no mention of the island by name? For it will be found that from one end to the other of the title papers there is no mention of the island of St. Anastasia save only in the testimony of Solano, in these words: He is certain that Fish "possessed *in* the island called St. Anastasia the plantation called the Orange Grove." The alleged grant not only does not make a grant of the island of Anastasia by name, but it does not in any single word refer to it by name or otherwise.

But the master further reports, in favor of the definiteness of the alleged grant, "there was only reserved from the grant *a small portion* of the island, which reservation was at the time well known and defined, having been previously laid off and separated from the rest of the island by the previous act of the Government, previous to this grant" (p. 71 of record).

Where is there one scintilla of evidence as to whether the reservation made in the grant, "the reserve of the

quarries," "and the remainder which the King has reserved," was but a small portion of the island?

As to this reserved portion having been previously laid off by the previous act of the Government, "previous to this grant," the only basis for this finding of the master is the testimony of the witness Solano, brought forward by Fish, and the recitation in the alleged grant by Morales that Solano, in the time of the old Spaniards, laid off by order of the Government the quarries to give the father of Fish possession, "as was affected," or, in other words, to give possession to what he possessed.

It will be shown later that the testimony of Solano and the recitation thereof by Morales are intrinsically incredible; but assuming that the recitation states a fact, how can it avail the appellees in this suit?

Basing their rights upon the title papers, which in terms reserves to the King the quarries, the remainder which was not granted to the father of Fish, and which the King reserved, and ordering a delivery of possession of the lands which the father of Fish possessed, how does it aid in determining now the dividing lines between what was granted and what was reserved, if it be a fact that in 1795 the citizen Solano knew what had been marked off as public domain prior to 1763?

It may be conceded, as the master reports, that the reservation was at the time well known and defined, and had been previously laid off, and yet we derive no aid in the determination now of the boundaries of the reservation set out in the language of the grant, or of that staked off by Solano one hundred and two years before the institution of the suit.

It is none the less necessary that there should have been a survey made and a description or plat of the lands reserved out of the insular body made of record. In the Perchman Case, although a concession in absolute property was made, yet the grantee thereafter petitioned for a survey, reciting his grant already made, and on this petition the governor indorses his order for a survey by the public surveyor. (*United States* v. *Perchman*, 7 Peters, 56.)

The master ignores wholly the necessity for any return of the alleged staking off and delivery of possession by Solano and its approval by the governor.

Appellants contend that if the language of the grant had been in these terms, "and there is granted to the said José Fish the island of St. Anastasia, in absolute property, with the reserve of the quarries and what the King has reserved," yet it would not have constituted a valid grant until the reserved lands had been duly laid off by an official survey, and such survey made of record, or by an unofficial survey and plat approved by the governor and made of record as an official determination of the bounds of the grant. Such approval would, by custom, have been evidenced by the issuing of a title in form. (*De la Croix* v. *Chamberlain*, 12 Wheat., 601.)

But even such approval would need to have been proved as a fact, since it would have been contrary to the custom and law of the province of East Florida. In this province there seems to have been no such thing as a judicial delivery of possession. Here there was by law a public surveyor whose duty it was to make a survey and record of all grants made by authority of the

King, and one Eastlake was regularly commissioned surveyor-general of East Florida September 20, 1791. (White's Recompilacion.)

Such was also the law and practice in West Florida. (2 White's Recompilacion, pp. 230–238, 239.)

See remarks of Mr. Chief Justice Taney in *Fremont* v. *United States* (17 How., 542) and of Mr. Justice Catron in *United States* v. *Lawton* (5 How., pp. 28, 29).

Appellees can derive no benefit in this suit from the alleged proof of boundaries, because it has never been approved by the governor, but if it had been approved it contains within itself no such descriptions as would be available without confirmation by the United States.

This court refused also to recognize a private survey in Buyck's Case, as also in the Hanson Case, and that while acting under the express direction of Congress and empowered to determine the boundaries of the grants presented, which authority the court many times declared it would most liberally construe in favor of claimants.

In the Hanson Case the court says, with reference to a private survey:

> It would have first have had to have been presented to the governor and extrinsic proof made that it was the land granted and lawfully made, * * * then the governor could have ordered a perfect title to issue. *United States* v. *Hanson*, 16 Pet., 201 (10–937).

A survey was required to be made and returned before a party could obtain a formal and perfect title. *Winter* v. *United States*, Hemp. (U. S.), 384.

If a party took possession but had no survey executed during the time Spain exercised jurisdiction, this being his own neglect, it lies upon him to establish the boundaries of his grant and to identify his land. *United States* v. *Boisedore*, 11 How., 96 (13–619).

But appellees say we identify our land by the testimony of Mr. Sanchez, and the master so reports. This is the language of the master's report:

> The master is of opinion that the boundaries of the reservation have been sufficiently established by the testimony *for all purposes of this suit*. From the testimony of Sanchez, who is a very old man and has been acquainted with the property for more than sixty years, and for a long period of time in possession of it as the agent of the heirs of Fish and in a position to know the location of such matters, it appears that there were two piles of stone at the intersection of the two roads on the island which Sanchez declares constituted the southwest corner of the King's quarries, and that a line drawn from these piles of stone to the site of the old Spanish light or lookout house and a line from the pile of stone eastwardly to the sea beach would comprise within these lines the reservation (p. 72 of record).

Now, where in the record of title or in the record at all, outside of Sarah Fish's memorial, is there any mention of the King's quarries? What knowledge has Mr. Sanchez of what lands were reserved in 1795, or what were laid off and staked by Solano? Solano says they "went, fixing up stakes to point out said boundaries, across the island." Mr. Sanchez admits on his cross-examination that he has no knowledge of the boundaries

of the reservation made at the date of the alleged grant. If the title papers themselves on their face fail to describe the lands reserved, then it could only have been done by a legal survey. If the demarcation made by Solano was a legal survey, it would be necessary to prove the boundaries as then pointed out. Mr. Sanchez does not pretend to be able to testify as to the land actually set off in A. D. 1795. It is evident that he bases his testimony upon the petition of Sarah Fish as printed in the American State Papers, vol. 4, page 465.

John Masters, the Government superintendent of works for seven years under Major Benham, U. S. A., in charge of building the sea wall at St. Augustine, says he never heard of the bounds of the King's quarries, and Rogero and Colee say they never heard of them. These witnesses have all occupied important public positions and their testimony is entitled to exceptional weight. But the testimony of their own witness, Harrington, refutes Mr. Sanchez's evidence completely. Harrington says the quarries extend 4 miles south from the Fish Island road, or more than 6 miles from the old light-house, and that he had heard that these quarries south of the road were for the use of the people and so laid off by the King.

There is absolutely no evidence in the record to sustain the description of the claim set up in the bill. The bill alleges title to that tract of land situate in townships 7, 8, and 9, range 30, known as St. Anastasia Island, *excepting therefrom what was known at the time of the Spanish grant, hereafter mentioned as the King's quarries*, the

boundaries of which were marked by stakes, the same being about 200 acres lying on the east of the old King's road, between the same and the old light-house. The pile of stones is located by the Hopkins survey in the SE. ¼ of SE. ¼ of sec. 28. East of the red line run from this pile of stone to the site of the old light-house embraces more than 600 acres of surveyed public lands besides an equal quantity of made lands yet unsurveyed. (See plat T. 7, R. 30 E.) There is no grant which by its terms corresponds with the description set out in the bill, and no testimony which assumes to state what was excepted in A. D. 1795. That the quarries or any quarries are east of the King's road is flatly denied by their own witness, Harrington, corroborated by Colee and other witnesses, and by the topography of the island as shown on the Coast Survey map in the record. Appellees attempted to explain this discrepancy in the area of the quarry by the erosion of the coast line in one hundred years, forgetting that the township map shows the lands as they were in A. D. 1834.

Appellees contended before the master that if the reservation was vague and undeterminable the reservation was void and the grant valid. See where this position leads? Themselves and the United States claim, under the King as the common grantor. All Florida, except what the King had before granted, was sold and transferred to the United States, and under the very rule they invoke the reservation by the treaty and the law of nations of the former grant of lands to the heirs of Fish is void

as an uncertain reservation out of the grant of the King to the United States, because their claim is Anastasia Island, except the public domain thereon, making such reservation vague and undeterminable.

While appellees are bound by this rule and their claim is void because of the indefiniteness of their alleged grant, the rule does not apply as against the United States, as the successor of the King, even by the principles of the common law.

The King's grants, proceeding from his bounty, have at all times been construed most favorably to the King, contrary to the grants of common persons.

Bacon's Abrid. Prerogative F.
Jackson v. *Reeves*, 3 Caine's Repts., 293–303.
Comyn's Dig., Grants G, 12.
Sir Walter Hungerford's Case, 12 Co., 86.

Appellants, however, insist that there was no intention to make a grant of property. The only words of grant in the Morales paper are these, "y se le concede en los terminos," which is translated "let them be granted to him on the terms above set forth," or by one translation "he is granted," which is nearer correct, for the verb is singular, and refers to the petition and not to the land; that is, to the possessory rights over the large tract of land.

The signification of the verb "concede" is important. It is not the word used in transferring an absolute right of property. In the absolute title issued to Bartolome Sintra (p. 364 of record) the granting word is the present indicative of the verb "dar," to give or grant. With

the verb "concede" it would have been necessary to use the phrase "en absoluta propriedad" to have made a conveyance in absolute property, and the verb would have had an object. For an object the phrase "la isla nombrada Santa Anastacia" (the island of Anastasia) would have been used if there had been an intent to grant the island. (See the concession to Perchman in absolute property, p. 54 of 7 Peters Reports.) The use of this expression "se le concede" is complete proof that there was no intention to make a grant of lands in absolute property.

The paper in its form was at most a concession of a possessory right of some character now not ascertainable, but whatever its form it purports to be executed by one Bartolome Morales,* political and military governor pro tem. (interino de ella). Appellees contend that this recitation in the title papers that Morales was acting pro tem. governor of the province is sufficient proof of his power to execute the instrument, and the master agrees therewith in his report. He says: "The grant is made by Bartolome Morales as political and military governor of East Florida, owing to the illness of the incumbent" (p. 68 of record). "The grant is attested by the licentiate, Ortega, and the notary" (p. 69 of record), this, like the remainder, being based on the assumption that Ortega's signature is genuine. There is an assumption that certain officials have subscribed these papers, and

*This Morales must not be confounded with Juan Ventura Morales, governor of West Florida and Louisiana.

then an assumption that they are genuine because so subscribed.

Appellants contend before this paper can be admitted as evidence of a grant of lands proof must be made of two facts—first, that Morales was acting governor by lawful authority and that Quesada, the governor appointed by the King, was deposed; and, second, that if Morales was acting in the place of Governor Quesada, it was by such authority and with such authority that he was empowered to make grants of land.

The presumptions attaching to the act of a public officer can never be invoked to sustain the act of the officer outside of the usual and recognized functions of his office.

Sheldon v. *Wright*, 7 Barb., 39.
International Ry. Co. v. *Prince*, 19 Am. St. Repts. 798.

No evidence of the existence of a condition calling for action by any person beside the lawful governor has been offered, or exists so far as known to counsel, and no record or matter of record has been produced indicating that Governor Quesada was not in the exercise of the duties of his office during the term of his incumbency outside of the mere recitations in the papers themselves. The recitations in the alleged grant itself are not evidence of the facts.

1 Eng. and Amer. Enc. Law, p. 969 (2d ed.).
United States v. *Hughes*, 13 How., 7.
United States v. *Cambuston*, 20 How., 59 (15–830).
Hughes v. *United States*, Sup. Ct., Oct. Term, 1897.

Ely v. *United States*, Sup. Ct., Oct. Term, 1897.
Branson v. *Worth*, 17 Wall., 32 (21–570).
First Unitarian Society v. *Faulkner*, 91 U. S., 415 (21–284).

Recitals are not evidence against one claiming adversely to one claiming under the party executing the deed (2 Phillips on Evidence, 4 Am. ed., note 476, p. 574, and many cases cited).

Where the recital points to higher evidence in the power of the party producing it, * * * the party will be held to account for the nonproduction of the higher evidence before the recital can avail him (that is, when otherwise under the rule it would be evidence).

In the case at bar, if Morales was acting governor there must have been record evidence of it. It is no excuse to say that now, after one hundred years from the event and seventy-five years from the change of flags, appellees can not discover such record evidence. The object of the law of 1828 was to afford to such claimants an opportunity to secure for their grants the aid of a confirmation, and to prevent just such a miscarriage of justice as has occurred in this case by long delay in the assertion of title, under the rules of evidence which indulge a presumption of the genuineness of documentary title from mere lapse of time.

This alleged grant purported on its face to have been made by virtue of the power held by Morales as governor. Before the instrument could be used in evidence this power must be shown.

Tolman v. *Emerson*, 4 Pick., 160.
2 Phillips on Evidence, 4 Am. ed., note 429, p. 472.

Until appellees had shown that Morales was an officer authorized to grant lands, even if they had established the fact that he was exercising the duties of the existing governor, the grants made by him were not evidence of title, but were void upon their face.

McGarrahan v. *New Iberia Co.*, 49 Cal., 332.
St. Louis Smelting Co. v. *Kemp*, 104 U. S., 836 (26–878).

The master sweeps aside all these rules of law and supplants them with an assertion of fact. "It is beyond question that Morales, on account of the illness of the governor was, during the latter part of these proceedings and at the time when the grant was made, acting political and military governor of the province, invested with all the powers and duties of such office; being therefore shown to have been the officer de facto, and recognized not only as such but as the officer de jure, it rests with the defendants to show to the contrary, which they have failed to do." (P. 70 of record).

In the courts a matter is beyond question only after competent evidence of the fact has been produced and admitted as evidence. Until some competent evidence is produced that Morales performed the duties of the office of governor of the province of East Florida, the assertion by the master that it was beyond question that he was the de facto governor must be deemed to be pure assumption. Appellants put in evidence the list of governors of the province of East Florida, showing that Quesada was governor from July 13, 1790, until July 20, 1796 (p. 197 of record). The master reports as a fact that Quesada was governor until 1795 (p. 59 of record).

The master is, of course, mistaken. Beside the evidence adduced there will be found in the reports of the land commissioners several grants of land by Quesada subsequent to June, 1795. (See Nos. 106 and 157 of cases reported in Report No. 1, vol. 4, American State Papers, p. 280, Duff Green ed.)

It would seem unnecessary to argue that even according to the principles of the common law Morales could not be deemed to be a de facto officer in the absence of evidence that he was performing the duties of the office, much more that such performance was under circumstances of reputation or acquiescence such as were calculated to induce submission to acts performed by him in the office he is alleged to have assumed.

State v. *Carroll*, 9 Am. Rpts., 409.
Wilcox v. *Smith*, 5 Wend., 231.
State v. *Murphy*, 32 Fla., 138.

He can not be held to be a de facto officer where the only official act shown to have been performed by him is the very act in dispute. A man doing a single act—in question—as an officer will not prove his commission.

Hall v. *Manchester*, 3 N. H., 295.
Rockhold v. *Barnes*, 3 Rand., 473.
Am. and Eng. Enc. Law, vol. 8, p. 784 (2 ed).

The only power possessed by a governor of a Spanish province to grant lands was vested in him as the King's subdelegate or deputy. It was held by the court in West Virginia that the idea of a de facto deputy is an absurdity. That it is to assume that there may be an

agent acting for and creating liabilities against a principal who has conferred no authority. (*Herring* v. *Lee*, 22 W. Va., 661.)

Morales could not be de facto governor while Quesado was de jure governor, performing the duties of his office.

Boardman v. *Halliday*, 10 Paige, 223.
Cronin v. *Stoddard*, 97 N. Y., 273–4.

Not having shown any color of title to the office in Morales, and it being apparent that all persons dealing with him during the presence at St. Augustine of Quesada, the lawful governor, must have known that he was not a legal officer, the appellees are not in a position to avail themselves of the rule that the acts done by this individual may not be inquired into.

Dabney v. *Hudson*, 24 Am. St. Repts., 276.
Vaccari v. *Maxwell*, 3 Blanch. (U. S.), 368.
United States v. *Alexander*, 46 Fed. Rep., 728.

The master cites as authority for his holding Morales was governor pro tem., 2 White's Recompelacion, page 270. A most unfortunate citation, if it be intended to show power in the governor to designate an incumbent for his own office, for the citation shows that when Estrada was appointed pro tem. governor he was required to produce as evidence of his right to perform the duties of the office an official letter from the captain-general of Cuba, under whose jurisdiction the two Floridas continued to be, and further shows that such evidence was presented in a formal manner and made of record in the Government archives.

Upon page 271 is printed a copy of the commission issued to Governor Coppenger by the King, by which it

appears that even with the King's commission he was not invested with possession of the office without the order of the captain-general of Cuba. The formalities and detail of the record evidence of his investure with office are set forth on page 272. The master has, perhaps, inadvertently misquoted the law from first White's Recompelacion, p. 371 (on p. 13 of the manuscript opinion, page 70 of record), as to the power in a governor to appoint subdelegates. The master says, "Defendants contend that while he (Morales) was the acting governor he was not the subdelegate, but this position is untenable, for all such powers were invested in the governor; and it is laid down in 1 White, p. 371, as to the powers of captains-general, *governors*, and viceroys, 'that they can act * * * all that the prince who named them might do.'" The text of the law (Book 5, chapter 13, p. 376, art. 2) as found in the volume cited, page 371, is that viceroys can act, etc.; the word governor is not found in the law. Further, no person would contend that the power to act by appointment from a superior gave power to a public officer to appoint to the office itself.

The principle upon which the acts of a deputy are sustained is the presumption of ratification by the principal. In the case at bar it can not be assumed that Morales was Quesada's deputy, for it is in evidence that Quesada exercised his office until July, A. D. 1796, and no ratification of the alleged acts of Morales are produced, and in fact outside of the documents produced in this case there is not one particle of evidence that Bartolome Morales ever performed any public duties in the province of

East Florida, and further, outside of the alleged grant to Fish, it has not been shown that any person by the name of Bartolome Morales was ever a resident of Florida.

The master attempts to sustain his report that the power to grant lands was lodged in the office of governor and not a personal trust, by citations from the decisions of this court. There can be no doubt that this court in the Arredondo case has gone to the extreme limit to sustain an official act of duly appointed officers of the Crown. The doctrine enunciated by the court has not been received without question by those most conversant with Spanish grants, and it has been questioned whether the court has not confused the limited powers of the governors with the unlimited rights existing in the King for the disposal of his own property, and this court, in 10 Peters, 731, admits the danger that lies in the doctrine and also the existence of laws and customs binding the King.

Investigation of the subject made subsequent to the decision in the Arredondo case has established beyond controversy the existence in the province of Florida of laws and ordinances regulating the disposal of lands.

There are two fatal objections to the application to this case of the doctrine enunciated in the Arredondo case and quoted by the master, that the disposition of the royal domain in Florida was within the discretion of the governors.

First, that language was spoken of the acts of the governor, the subdelegate of the King; and, second, the

doctrine was asserted in relation to a grant being adjudicated by the court under a statutory grant of power to this court to determine according to the stipulations of the treaty and the several acts of Congress in relation thereto in a controversy between the grantees and the United States, instituted by consent of the United States.

First, as to the acts of the governor.

In the case at bar the master assumes that Morales was de facto governor, and then, finding no law authorizing a de facto governor to grant lands, he assumes that the power to grant lands was conferred not on the governor, but upon the office itself (p. 70 of record). The doctrine laid down by the court in the Arredondo case is logical, if it be not correct. The court sustains the grants made on the theory of the omnipotent power vested in the person of the governor as the King's deputy or subdelegate.

Appellees may claim either theory: that there was power in the office of governor to grant, in which case such power must be evidenced by some law, or that the power being in the person of the governor as the King's deputy, there was no law binding him, and his discretion was unlimited, and if they hold a document of grant executed by the governor they are not required to produce any law to sustain it. Unfortunately for their case they produce no law investing the office of governor with the power; neither do they produce any document executed by any governor of the province.

To assume that the power to grant was attached to the office of governor, whoever might be temporarily acting,

and by whomever appointed, is to sweep aside all the court declare to be deduced as evidence of validity from the personal relation to the King of the granting officer.

There can be no question that the power to grant lands was a personal trust conferred by the King. The lands were his and not the property of the State, and the governors appointed by him were designated with the additional title of vice royal patron and subdelegate of the royal domain. In the case at bar Quesada so subscribes himself. Every royal title recites that it is made in the name of the King by virtue of his sovereign will. (8 Peters, 442.) It is in evidence that Quesada was the duly appointed governor at the time, and no evidence is produced that he either deputized Morales or confirmed his alleged acts. The finding of the master that Morales was governor is clearly erroneous.

Applicants contend that upon principle a subdelegate of the royal domain could not delegate his power to grant lands, and further contend that the burden of proof is upon appellees to establish the power. (*United States* v. *Power's Heirs*, 11 How., 579.)

Under the liberal principles of the common law such power could not be delegated. It was a personal trust. The duties of the governor in respect to the granting of lands were judicial as well as ministerial, and the proceedings in the case at bar purport to establish a judicial decree.

Shankland v. *Mayor, etc. of Wash.*, 5 Pet., 395 (8–167).

Warner v. *Martin*, 11 How., 224 (13–673).

1 Bacon Ab. Authority D.
Runkle v. *United States*, 122 U. S., 557 (30–1171).
1 Am. and Eng. Enc. Law (2 ed.), p. 972.
Newton v. *Bronson*, 13 N. Y., 587.

Appellants contend that if Quesada was incapacitated by sickness only routine duties could be delegated, and cite as authority:

Potter v. *Merchants' Bk.*, 28 N. Y., 641.
1 Am. and Eng. Enc. Law (2 ed.), 974.
See letter of Governor John Morales, 9 Peters, p. 144.

For proof that the governor *alone*, as subdelegate of the King, could grant lands we cite, for convenience of reference, 2 White's Recompilacion, pages 30, 50, 52, 57, 63, 104, 180, 245, 466, 473.

On page 57: The governor and captain-general of Florida shall be appointed by ourselves. (Laws of the Indies, Bk. 5, pt. 2, Law 1). On page 58: No one can exercise those offices but such as derive title from our royal person, etc.

Mr. White, in his reports to Congress, says: The intendant was denominated subdelegate of the King; he had special powers conferred upon him. (Clark's Land Laws, p. 1046.)

Throughout the entire discussion of the subject in the Arredondo case the attention of the court is directed to a power delegated by law to a public officer, and exercised in the name and by authority of the sovereign power. The principles there enunciated have no application to

acts performed by virtue of authority not shown to emanate from the sovereign power, but assumed by an incumbent of office in direct contravention of the laws governing the powers and duties of such officer.

The principles enunciated by this court in the Arredondo case moreover were declared with reference to a particular condition of affairs which no longer exists. That decision was made under a statute expressly laying down the rule of decision, which this court construed to be a direction to deal with the subject on the most liberal principles and to adjudge the questions according to the rules prescribed to the court by the political department of the Government.

The several acts of Congress relating to Spanish grants were considered by the court as giving to the paper titles a greater and more conclusive effect as evidence of a grant by proper authority, when the due and legal execution of the grant *by the proper officer was shown.*

The court says, on page 723 of 6 Peters's report, that under the Florida treaty, by the several statutes enacted, Congress had not required in such a case a production of the authority on which the grant was made, but has been content that the rights of the United States be surrendered by patent upon a grant produced, purporting to have emanated *under all the official forms and sanctions of the local government,* and on page 727 this principle is again stated; but on page 743 the court says, "Should we be called upon to decide on the validity of a title acquired by any Spanish grant not embraced by these laws (for the adjudication of land claims) we should

feel bound to follow the course pursued in *Foster* v. *Nelson* (2 Peters, 314)."

The same doctrine has been laid down in a late case, *Hayes* v. *United States*, October term Supreme Court, A. D. 1897.

The presumption of authority arising from the exercise of power applies against the sovereign only when it consents to be sued. (6 Peters, 714–732.)

Appellees entered the courts basing their rights upon the grant from a foreign sovereign without the benefit of any legislation by Congress. They escaped proving their grant by reason of their long delay, and yet they seek all the aids and benefits granted by Congress to those who promptly submitted their claims to adjudication when the United States consented to be sued.

Appellants confidently expect this court to enforce the rule enunciated in *Foster* v. *Nelson* and *Bouteller* v. *Dominguez* and visit upon appellees the penalties of their own laches.

The whole character of the instrument alleged to have been executed by Morales, on the 19th day of June, A. D. 1795, is such that the mind is impressed with the conclusion that it must either deal with some use of the lands not now understood or else it must be spurious.

It is too unreasonable for belief that a responsible officer of high rank would presume to deal with so valuable a property as Anastasia Island in the loose and careless way evidenced by this alleged grant. Not only

does it not set forth any single ground for a grant of title, but even the right to the possessory occupancy is based upon three alternative claims; and the recitation that Solano is proven to have laid off a reservation of the quarries in the time of the old Spaniards is so extremely preposterous as to destroy all title to credibility. Solano testified before the notary in A. D. 1795 that he was 46 years old, making his birth in 1749; the Spanish delivery of Florida to Great Britain was in 1763. Hence it would appear that Morales, acting governor of East Florida, subscribes to a declaration that a boy of 14 years of age laid off a valuable reservation of lands by order of the governor. Further, the only conclusion to be drawn from the language of the instrument is that Morales found, as a fact, from the testimony of three witnesses, that Fish, sr., possessed, in the time of the old Spaniards, 10,000 acres of land. It is universally admitted by all who have investigated and reported upon the subject that few, if any, grants of land were made prior to 1790—that is, until after the time of the old Spaniards, *and after diligent search of the abstracts of the claims confirmed in East Florida counsel has been unable to find a single claim bearing date prior to 1763.* It is incredible that the acting governor of the Territory should have treated a matter of such importance in the manner this instrument would make it appear.

With the copy of the title papers printed in the American State Papers there is found a receipt for 13,880 reals, equivalent to $1,735, paid by Fish, on April 12, 1792, *for the plantation called the Bergd* and a city lot.

Fish at that date certainly does not set up a claim to the whole of Anastasia Island. This receipt seems to be an official act and is entered in the archives as a record both of the sum paid and a description of the properties sold to Fish. It is not shown that this act was ever repudiated, and it is therefore evidence of what property Fish purchased at the sale. Its record makes the absence of any record of an official act investing Morales with the functions of governor the more noticeable.

Appellees have placed stress upon the fact that the board of land commissioners recommended the claim for confirmation, and they declared it is evidence of the validity of the title papers, and that the United States has recognized the validity of their claim to the extent of a league square; and hence the validity of their title.

Appellants contend to the contrary, and say that the second section of the act of 1828 expressly declares the confirmation not to be effectual without a release of all in excess of a league square of the claim confirmed, and it is admitted the claimants under Fish never made such release.

The master also reports, "irrespective of the treaty, the confirmation of this grant by the act of 1828 not only affirmed its validity, but in effect operated to confirm it to the full extent of the area of the land granted by the grant of Spain to Fish" (p. 83 of record).

To this we only need to say that if the master's conclusion be law all those persons who, like Arredondo, presented their claims for large grants to the courts under

the act of 1828, after they had been recommended for confirmation (as all but Perchman's were), must have been lacking in sound sense and legal acumen.

But it may be asked, How do we account for the approval of the claim by the board of land commissioners?

The answer to that question is best given by a reference to the six cases appended to the report No. 3 of this board on page 283, vol. 4, American State Papers. (Duff Green ed.; p. 571, G. & S. ed.)

NOTE.—While these six cases are appended to a report entitled as founded on royal titles it is apparent from the numbers, 1 to 6, preceding the cases as also the title on page 465 (Duff Green ed.; 697 G. & S. ed.), that these cases do not purport to have been founded on royal titles. Had these cases not been published under this heading, it is not improbable that the claim that the alleged grant to Fish was an absolute title would never have been advanced.

Of these six cases one was confirmed to George Murray, a member of the board, and the same land also confirmed to Symington, while no evidence of the grants was found in the archives (see 2 White's Recom., p. 378), and the two claims confirmed to Clarke and Delespine upon the alleged grant to Arambide have been declared of no validity by the court. This disposes of four of the six claims. The Fish claim is here before us in all its inherent weakness. The claim of Teresa Rodriguez alone remains, and the evidence submitted with this

claim shows that it purported to be but a concession. (See p. 471, vol. 4, American State Papers, Duff Green ed.; p. 705, G. & S. ed.) So that if the board ever placed it in a report of claims founded on royal titles they were guilty of fraud.

The character of these commissioners may be judged from their conduct, as set forth in the letter of Alexander Hamilton dated March 31, 1824 (vol. 3, American State Papers, p. 655), also by the fact above stated, that the board confirmed claims to its own members and to its secretary. (See No. 8, Rep. No. 7, p. 285–298, vol. 4, American State Papers.) In this case confirmed to the chairman of the board the original documents are reported as lost.

If the decisions of the board are entitled to respect, then it becomes incumbent upon appellees to explain how it is that the board confirmed to the heirs of Rodriguez and of Sanchez parts of this same alleged grant to Fish, contrary to the finding of the master, that the whole island, except a small portion reserved to the King, was granted to Fish in A. D. 1795, in absolute property. (Vol. 4, American State Papers, p. 214; vol. 5, p. 420.)

As to that portion of the master's report which finds the grant was confirmed by Congress, under the rule laid down in the case of *Slidell* v. *Grandjean* (111 U. S., 440), such confirmation in any event would be void, the commissioners having recommended a confirmation of a grant for 10,000 acres of land without naming any specific tract.

THE EVIDENCE THAT NO GRANT OF ANASTASIA ISLAND WAS EVER MADE TO FISH IS OVERWHELMING.

First. The alleged grant as set out, 10,000 acres made in 1795, is contrary to the laws and ordinances existing in the province of Florida at that date.

The answer, paragraph 30, averred that in A. D. 1795 the only law or ordinance in force in Florida authorizing grants of land was the royal order of 1790, and the averments of the answer were fully established by evidence. (American State Papers, vol. 3, pp. 624–626, Duff Green ed.; 726–727, G. & S. ed.; vol. 5, p. 747 et seq., G. & S. ed.; also printed 2 White's Recompilacion p. 272 et seq.; American State Papers, vol. 6, p. 55, G. & S. ed.; vol. 5, p. 372, Duff Green ed.) All the evidence proves that few grants were made prior to 1791. "How lands could be granted, and that by the governors themselves." (Report of December 13, 1827, American State Papers, vol. 5, p. 403, G. & S. ed.; report of R. K. Call, special counsel to Secretary of Treasury, in compliance with House resolution of February 23, 1835, vol. 8, American State Papers, p. 251 et seq.)

In reply appellees contend that the presumption arising from the grant itself has been declared by this court sufficient evidence of power in the granting officer, any law to the contrary notwithstanding. As before stated, this applies only to the acts proved to have been performed by the responsible official exercising the powers conferred upon him by the King.

Further, the principle has no application to a contest between titles emanating from a foreign sovereign and a patent issued by this Government. Here the question for decision is whether the heirs of Fish or the United States acquired title to these lands, and is a political question upon which this court may not indulge in presumptions as against the claims of its own sovereign.

Ely's Administrator v. *United States*, 170 U. S., p. —.
Slidell v. *Grandjean*, 111 U. S., 412 (28–329).

Second. This grant does not appear among the complete grants made by Spain in East Florida, and hence was not recognized by Spain at the time of the cession as a *title* to land.

See list of all real titles or patents to land issued by the governor of East Florida, page 261 et seq., Vol. 8, American State Papers, pages 159 to 164 of record.

This evidence alone should be conclusive. (*Lavergne's Heirs* v. *Elkins*, 17 La. Repts., 220.)

Appellees seek to avoid the force of this evidence by citing the holding of this court in *United States* v. *Augusoda* (1 Wall., 352). In that case Jimeno's Index was not in evidence, and it nowhere appears that there was proof that this index contained a list of all grants made.

The evidence in the case at bar is that all the royal titles existed in the office of the keeper of the public archives (p. 252; Vol. 8, American State Papers, p. 158) of record, and appellees have produced from the archives their title papers, which upon their face make an inciplent title.

Appellees objected that the reports and testimony printed as given by Alvarez, Segue, et al., were not evidence as against them, not being parties to the proceedings wherein such testimony was given.

The objection is not well taken. To prove custom, affidavits and evidence given in cases between other litigants is competent.

Bogardus v. *Trinity Church*, 4 San. Ch., 633.
1 Green Evidence, sec. 555.
Onsuega v. *Willings*, Peters C. C. (3 Ch. Pa.).

Moreover, this testimony and the reports have been printed as parts of public documents which this court may consult.

United States v. *Teschmaker*, 22 How., 392 (16–357).
New York Indians v. *United States*, 170 U. S.
Jones v. *United States*, 137 U. S., 202–214.

Third. Other grants of the same lands alleged to have been patented to Fish by the responsible officers of the King of Spain. (Exhibit Nos. 17 and 18, pp. 339–341 of record.)

By Exhibit No. 17, Governor Quesada, on February 15, 1793, one year after the sale of the Vergel, and two years before the alleged grant to Fish, made a concession to Rodriguez of 300 acres in the northern part of Anastasia Island within the lands the master finds to have been granted to Fish, which, after survey and proof of occupancy, was, in A. D. 1805, perfected into a royal title by Governor White, who enjoyed a reputation for great strictness in land matters, and it appears in the lis of complete titles furnished by Alvarez (p. 162 of record).

On July 3, 1802, Francisco Sanchez received a grant within the bounds of the lands claimed to have been granted to Fish in 1795. The petition of Sanchez describes the lands as vacant and "formerly occupied by the free negroes." Certainly, while not conclusive, this recitation is strong evidence that the lands had not been granted to Fish seven years before. Sanchez's lands were afterwards surveyed by the Spanish authorities as the King's lands, which is not only inconsistent with a former grant, but, under their land regulations, the most convincing evidence that there existed no former grant.

The master fails to mention the list of complete titles furnished by Alvarez, and, as to the two grants to Rodriguez and Sanchez, he says in his findings of fact (p. 62 of record), that "neither of said permits nor locations constituted a complete grant in absolute property, and both were without prejudice to a third;" yet it was in evidence before the master that the Rodriguez grant was in 1805 perfected into a perfect grant in absolute property.

This court has declared the law to be that a subsequent concession of a part of the same land is *conclusive* that no right was recognized by the former sovereign. (*D'Auteire* v. *United States*, 700 (25–871).)

Unless the English language has ceased to have meaning, the subsequent grants by those officers known to exercise the granting power under the King of Spain of parts of the same lands alleged to have been granted to Fish by Morales must establish that no title to the lands was ever made to Fish.

Fourth. A former grant of lands to Jesse Fish as a new settler, which was perfected into a royal title after the alleged grant by Morales. (Exhibits 13 to 16, pp. 318 to 338 of record.) It is significant that this grant to Fish of 500 acres appears among the complete titles furnished by Alvarez (p. 160 of record). The very report which appellees offer in evidence in this case, dated January 1, 1826 (p. 276 of vol. 4, American State Papers, Duff Green ed.), says: "There is one rule which the commissioners suppose it would not be unreasonable to apply in the adjustment of these claims. In cases where an application shall have been made for a grant of land as a remuneration for services, or other object embraced in the policy of the Government, and the grant shall have been made accordingly, if the same individual shall have made a second application * * * it would be no more than just to suppose the first concession was full and ample, unless otherwise recited in the grant itself, and the subsequent grant was an assumption of power not warranted by the laws and usages nor the policy of the Government."

But the recitations in the title papers of the 500-acre grant are conclusive evidence that Fish received no 10,000-acre grant on Anastasia Island. In his petition he declares himself owner of eight slaves. In 1818 Gabriel W. Perpall, as his administrator, the husband of his sister, and, as appears by the American State Papers, owner of many Spanish grants in Florida, applies to the governor for a title in absolute property to the heirs of Fish on this concession of 500 acres, but he seeks for

more land than the original concession because of the increase in slaves acquired by Fish since 1791, which he declares entitles Fish's heirs to 370 acres additional land (p. 325 of record). Now, what does Governor Coppinger say to this application for more land? That Fish has already had 10,000 acres granted to him upon his petition as a new settler and is not entitled under the law to more? No. He does not question *the right set up*, and makes a concession or grant for the 800 acres prayed, but later revoked his concession and declared the request comes too late as all the lands have been granted the Duke of Alagon, thus admitting that under the law Fish was entitled to 870 acres of land as a new settler (p. 336 of record). Would the governor have admitted in A. D. 1818 the right in Fish to 370 acres of additional lands by an increase of the eight slaves to thirteen if Fish had been granted the quantity authorized by an ownership of 400 slaves upon his petition to be granted lands as a new settler, which appears in this record?

In the proceedings in the 500-acre grant the law existing in the province requiring the issue of the complete title is set forth, and full proof in conformity to the law appears in the record. How can it be explained that in the case of the small grant for 500 acres the administrator sought before the transfer to the United States the evidence of his complete title, and made the proofs required by law, but neglected wholly to seek such a perfection of the rights of his intestate, and the evidence thereof in the matter of Anastasia Island if it was a

grant of land? The effect of this evidence is avoided in the master's report by the assertion that appellants' contention that lands could not be sold is not correct, and cites the case at bar as proof that lands were sold.

It has never been denied that judicial sales were made of private property. Upon the death of a resident of the province his estate was administered by the King. Appellants contend that the public domain could not be sold. In the case of Russell, No. 10 of report No. 3, page 283, vol. 4, American State Papers (Duff Green ed.), printed at length on pages 451 et seq., a special authority had to be obtained from the King to exchange lands for a vessel. If counsel may be pardoned for the digression, it will be interesting to note in this case that the document executed by Governor Estrada, dated July 8, 1812, recites the existing law as to the issuance of a royal title, that the same only issued after ten years of occupancy. The words are, "if he (Russell) thought proper to make a gracious present of the same (the schooner) to the King, in that case, as soon as he would take possession of the lands which he was to have as a new settler, the royal title to them would be immediately granted to him, which otherwise he was not entitled to until after having cultivated them ten years without intermission" (p. 452, vol. 4, American State Papers, Duff Green ed.).

The 500 acre grant to Fish, as a new settler, demolishes the foundation of the master's finding, that his father had received a grant of 10,000 acres in the time of the old Spaniards, to which Fish acquired a right by inheritance.

Fifth. No survey or plat was ever made of the 10,000 acre grant, but the grant to Fish of 500 acres was surveyed and the proper record found in the archives. Under the Spanish law a survey and possession were indispensable to the issuing of a title in form. (*Lavergne's Heirs* v. *Elkins*, 17 La. Repts., 220.)

Sixth. That no governor or responsible officer of the King would have dared to grant to an individual, much less to one so humble as Fish appears to have been, the island forming the defense of the Spanish possessions in East Florida.

By the law of the Indies no islands could be granted foreigners (p. 197 of record), nor could a grant be made of lands for settlement in any seaport, nor in any part which might at any time be prejudicial to the King. (Lib. 4, Tit. 7, Law 6; 2 White, Recompilacion, p. 46.) The circumstances attendant must be considered in construing the grant. (*Cavazos* v. *Trevino*, 6 Wall, 773.)

Seventh. This island of Anastasia only eight years prior to the alleged grant thereof had been the subject of a special report by the governor to the King, as a possession of great public importance to the entire province of Florida. (Exhibit No. 23, p. 346 of record.)

Eighth. Upon uncontroverted evidence the extent of the alleged grant is greatly in excess of any grant made by a governor until the time it became evident that Spain was about to turn over her possessions to the United States.

In the case of *United State* v. *Chaires Antonio Alvarez*, the keeper of the public archives, an official in the same office under Spain, testified, "the largest quantity of land confirmed by a royal (real) title previous to the year 1816 was to John McQueen (3,275 acres)." (Vol. 8, American State Papers, p. 252; pp. 279–280; pp. 157–158 of this record.) Of the grants of over 3,500 acres which were afterwards perfected into complete titles the concessions of but three, two to Huertas and one to Clarke, were made prior to 1815. (See list of Complete Titles, vol. 8, American State Papers, p. 251; pp. 159–162 of record.)

If appellees should contend that the list furnished by Alvarez does not contain all the complete titles issued, the American State Papers and the volumes of reports of this court are accessible to disprove the testimony of Alvarez, and also the fact above stated that but three concessions of over 3,500 acres perfected into complete titles are of earlier date than 1815. Further, counsel have diligently searched the reports, and such investigation discloses that during his term of office QUESADO GRANTED IN ABSOLUTE PROPERTY ONLY 5,382 ACRES OF LAND. Is it to be believed that during his illness the acting incumbent made one grant of double this area?

Ninth. That Fish never seemed to have asked for a title in absolute property for the lands, either in his purchase of the Vergel or on the alleged grant by Morales, while in all other cases the holder of a concession and the purchaser at a sale seek at the outset by the prayer of the

petition to obtain a title to the land, and in case of a concession file a second petition praying a title in absolute property to the lands granted.

Deed to Travers, vol. 4, American State Papers, p. 486 (Duff Green ed.).

Deed to Bartolome Sintra, p. 362 of Record.

Tenth. That Governor Coppinger, at the change of flags, made no mention of a private ownership of Anastasia Island, but expressly refers to it as a part of the King's domain to be delivered to the United States. (Vol. 2, American State Papers (miscellaneous), p. 878; p. 152 of record.) The attention of the court is called to this evidence, which will not be set out at length, for the sake of brevity.

Eleventh. That while Arredondo, claiming 4 leagues square of land, and all other claimants of immense tracts of land, whose grants were in as favorable a condition as this grant of Fish, after action by Congress of May 23, 1828, presented their title papers to the court and proved their execution (unless they escaped it by Aguila's certificate), yet the heirs of Fish, for some reason best known to themselves, declined to bring their title papers to the scrutiny of a judicial examination.

Many of these grantees, like Arredondo and Huertas, had gone to Cuba, yet the administrator of José Fish, Gabriel W. Perpall, appears by this record to have been a resident of St. Augustine, and the executors of Sarah Fish were before the board of land commissioners in this

claim, and by the extract from the county court minutes in evidence are shown to be undischarged at a time long subsequent to the expiration of the act of May 26, 1830.

It must be remembered that the superior court held its sessions at St. Augustine, in sight of the lands.

Twelfth. That Col. Robert Butler, who received the province of Florida from Governor Coppinger, should have extended the public surveys over Anastasia Island in A. D. 1834 as the surveyor-general of Florida and a resident of St. Augustine.

That Judge Putnam, residing at St. Augustine, was ignorant of the claim of Fish, and, as surveyor-general in A. D. 1852, approved the public survey of the lands of Anastasia Island. (See complainants' Exhibits I, J, and K, the township maps appended to the record.) The same surveyor-general approved the surveys of the two confirmed private land claims of Rodriguez and Sanchez. (Defendants' Exhibits Nos. 17 and 18.)

Thirteenth. That claimants never furnished evidence for the survey of their alleged grant, as required by section 12 of act of February 8, 1827. The agreement between Lieutenant Tuttle and the administrator of Fish only two years after the expiration of the act of 1828, as extended in 1830, recites that the United States had called upon Fish's representatives to fix and establish the bounds of their claim. (Exhibit H, p. 259 of record.)

Fourteenth. That claimants never presented their claim to the courts under the act of June 22, 1860, and its several extensions, as a complete title nor to the register and receiver as a concession.

Fifteenth. That claimants never registered their grant, as required by chapter 1492, Laws of Florida, as amended by chapter 1546.

Chapter 1492, laws approved January 4, 1866, required every person owning lands granted by Spain or Great Britain to file in the office of the circuit court for the county where the lands lay a description of the lands granted.

Sixteenth. Failure to object to the quarrying of stone for seven years, by orders of Major Benham, U. S. A., during the construction of the sea wall, or seeking compensation for the great amount of stone used by the Government in that work. (Testimony of John Masters, p. 184 of record.)

The truth is that in the days when claimants could have had incontrovertible evidence of title issued to them upon proof, they were unwilling to present their claim, but now that a great length of time has elapsed—a length of time that necessarily obscures all human evidence and deprives interested parties of the means of ascertaining the nature of the original transactions—they present their ancient title papers and claim every presumption of authority, regularity, genuineness, and effect.

Such laches are a bar to any rights that may have existed.

Underwood v. *Dugan*, 139 U. S., 380 (35–199).
2 Story, Equity, section 1520.

This principle receives additional weight as applied to transactions arising under a foreign system of laws and recorded in a foreign language. For these and other grounds appearing on the record the court erred in sustaining the findings of the master and in confirming his opinion over the objections of appellants, defendants below.

The sixth, eighth, and ninth assignment of errors may be argued together.

Sixth. The court erred in making the decree dated the 6th day of April, A. D. 1898, and in decreeing the relief prayed in the bill, or any relief.

Eighth. The court erred in refusing to dismiss the bill at the hearing for the following reasons:

(1) Because by a proper construction of the treaty with Spain and the acts of Congress for the settlement of land claims in Florida the statutes of the United States barred the claim of complainants.

(2) Because the claim presented, if genuine, was made without authority.

(3) Because the grant, if genuine, was an inchoate title.

(4) Because the concession presented was of an undefined and unsegregated quantity of land, and the exception not established.

(5) Because no sufficient possession was proved.

(6) Because complainants proved title out of themselves.

(7) Because the evidence showed the claim had been determined adversely to complainants, in a tribunal having jurisdiction of the subject-matter and parties, at the request of complainants.

Ninth. Error assigned. The court erred in refusing to dismiss the bill at the hearing.

Nearly all the specific grounds for dismissal set out under the eighth assignment of errors have been fully argued. The decision made upon appellee's claim of title by the land department remains to be considered.

The evidence showed the claim had been adversely determined by the Land Department on an adjudication sought by appellees.

It is proper here to note that this Government not only afforded every facility to the Florida claimants to prove their claims, but itself secured and made accessible the evidence to establish every valid claim.

During the great contest over the Forbes claim, involving over a million acres, this Government formally requested from the Government of Spain copies of all grants made in the two Floridas when under the Spanish Crown.

(See 2 White Recompilation, p. 363 et seq.)

It is thus apparent that in entering upon the investigation of any claim to lands under the former Government of Spain the officers of this Government were not left in doubt as to the facts.

Appellants offered in evidence a certified copy of proceedings had before the Commissioner of the Land Office and on appeal before the Secretary of the Interior in the claim of Charles M. Furman for lands on Anastasia Island under the alleged grant set out in the bill (Exhibit No. 12, pp. 308 to 318, of record); also the proof of notice to Furman, etc. (Exhibits 7–8, 9–10, and 11, pp. 297 to 308 of record), all of which were ruled out by the master as irrelevant.

Eliminating extraneous matters, the question for determination on this appeal is, whether because the grounds set forth in the decision by the land department for the rejection of the claim were the laches of appellees, evidencing an abandonment of their claim if originally valid; therefore the decision was not a bar to an assertion of the claim and a suit for the cancellation of the patents issued by this Government in the circuit court of the United States for the southern district of Florida.

Appellants contend that the decision of the land department was a complete bar, certainly on the allegations of the bill. This contention is strongly supported if not sustained by the inquiry, if it were otherwise why did Mr. Furman and Mr. Sanchez apply to the Department to adjudicate their claim and issue the patent? Had the decision sustained the claim would they have admitted that the State of Florida could have appealed to the courts to pass upon the acts of the honorable Secretary of the Interior if he had rejected the State's application to enter the lands as public domain under the act of June 9, 1880, and held the lands to be part of a private grant?

Appellants contend that the determination of the validity and bounds of a grant emanating from a foreign government when passed upon by the land department involves both questions of law and fact, and that such determination is not reviewable by the courts, except upon allegations of error of law or of fraud practiced.

The position of appellants is set forth in the opinion rendered by this court in the case of *Gonzales* v. *French*, in these words:

> As the claim was passed upon by the proper local officers of the land department, and subsequently on appeal by the Commissioner of the General Land Office, and upon a further appeal by the Secretary of the Interior, and as the result of the contest was the granting of a patent, the plaintiff *must aver and prove* either that the land department erred in the construction of the law applicable to the case; or that fraud was practiced on the officers, or that they are chargeable with fraudulent practices. *Gonzales* v. *French*, 164 U. S., 338 (41–458).

In the case at bar the bill simply avers the patents were void, because the United States had no title; a conclusion of law, and in any event a mixed question of law and facts which the evidence offered showed had been determined by a competent tribunal against the averments of the bill.

THAT THE LAND DEPARTMENT HAD JURISDICTION.

It may well be questioned, in view of the legislation upon the Florida claims passed by Congress, whether the land department could take jurisdiction of an uncon-

firmed claim and issue a patent thereon, but the United States alone could object where no private claim to the lands was involved; so the objection is not material in this case, so far as the grants to Rodriguez and Sanchez are not involved. Prior to the act of 1824 Congress alone could pass on such claims, wherever situated. *United States* v. *Lawton*, 5 How., 28 (12–35).

In 1860 Congress again allowed such claims to be adjudicated by a board when inchoate, and by the courts when complete, and this act continued in force until A. D. 1875, when it finally expired. Since 1875 there has been no other tribunal than the Land Department for the determination of whether or not lands within the territory derived from Spain were private, or passed to the United States as part of the Crown lands.

Upon the theory of appellee's bill this Fish claim has been confirmed by law (treaty), and therefore on their own contention it would be the duty of the Land Department to issue therefor a patent under section 2447, Revised Statutes. Exhibit No. 11 shows appellees made application for such patent (p. 307 of record). Under section 453 Congress has delegated to the Commissioner of the Land Office all executive duties in any wise relating to private land claims.

Upon these two sections the department may properly be deemed to have had jurisdiction of the subject-matter after the expiration of the several acts conferring power elsewhere to determine upon these claims.

United States v. *Arredondo*, 6 Pet., 732.
Cire v. *United States*, 98 U. S., 433.

Catholic Bishop v. *Gibbon*, 142 U. S., 161 (35-985–6–8.

Teschmaker v. *Thompson*, 79 Am. Decs., 157.

Knight v. *U. Land Ass.*, 142 U. S., 177–8 (35-979–80).

Orchard v. *Alexander*, 157 U. S., 372 (39–738).

That the Land Department was authorized to determine whether or not the lands were a part of the public domain, we cite:

United States v. *Clark*, 8 Peters, 436 (8–1001).

Menard v. *Massey*, 8 How., 294 (12–1096).

Langdeau v. *Hanes*, 88 U. S., 521 (22–618).

West v. *Cochran*, 17 How., 403 (15–115).

Newhall v. *Sanger*, 92 U. S., 294 (23–770).

Shipley v. *Cowan*, 91 U. S., 340 (23–427).

That the decision of the Land Department was final and binding on the parties before it:

St. Louis Smelting Co. v. *Kemp*, 104 U. S., 636 (26–878).

United States v. *De Repentigney*, 5 Wall., 268 (18–646).

McMicken v. *United States*, 97 U. S., 204 (24–947).

Astiazeran, etc., v. *Santa Rita L. Co.*, 148 U. S., 80.

Cath. Bishop, etc., v. *Gibbon*, 158 U. S., 168 (39–936).

Moore v. *Stinebach*, 127 U. S., 70 (32–55).

Lee v. *Johnson*, 116 U. S., 48 (29–571).

Johnson v. *Towsley*, 13 Wall., 72.

Vance v. *Burbank*, 101 U. S., 514 (25–929).

The circuit court, proceeding as a court of equity, had no jurisdiction to set aside the proceedings of a tribunal having special jurisdiction of the subject-matter.

Moores v. *Smedley*, 6 John Ch., 28.
Duchess of Kingston's Case, Smith's Leading Cases.
White v. *Coatsworth*, 6 N. Y., 137, p. 143.

Appellants contend that upon the title papers offered, if deemed authentic and valid, it was apparent to the judge that any determination of the claim of Fish by the Commissioner of the Land Office, as prayed by Mr. Furman, involved questions of fact, namely, whether or not certain of the lands were a part of the reserve or the alleged grant; whether or not the lands claimed to have been granted had been sufficiently segregated and identified at the time of the alleged grant, and whether or not after the change of flags the reserved lands were sufficiently identified to enable them to be set off from the alleged grant, and whether or not the claim had been abandoned if originally a valid grant.

There was one question of fact the finding of which by the Land Department, under the decisions of this court, determined conclusively the question of title in Fish's heirs, namely, whether or not there had been a survey of the alleged grant made by the authorized officials of the King of Spain.

As before stated, no statute or ordinance authorizing a segregation of the public domain by the act of private parties, attested in presence of a notary, even if there was proof of the genuineness of the document, is in evidence, or

has been found among the laws and ordinances existing in the province of East Florida. On the contrary, the existed at the period in question a duly appointed surveyor-general, with ordinances providing for the survey, plat, and record of all grants of land, even the scale of the plat being regulated by law. Not only are these plats found with all completed grants in the archives, but this court has determined as a matter of law that without such a survey there was no segregation of the lands and consequently claimant was not the owner of any particular tract of land. Take the case at bar, the most that could be said, upon proof of a complete title issued by a responsible official, would be that it is a grant of an undefined body of land. According to the contention of appellees it was Anastasia Island, except what was reserved. What was reserved? Why, what was marked off and not delivered. What was delivered? Why, what was not marked off and reserved; what his (Fish's) father possessed. It thus devolved upon the Executive Department to determine upon the petition of Mr. Furman if the lands could be now segregated. (See Remarks of Mr. Justice Catron in *United States* v. *Fremont*, 18 How., p. 40.)

Even if the Land Department had considered the case upon the petition of Mr. Furman, upon the rules adopted by this court under the act of 1828, where it held that Congress both authorized and required this court to adjudicate the titles "with full power and authority to hear and determine all questions arising in the cause relative to the title of the claimants, the extent, locality, and boundaries of their claim or other matters connected

therewith in a spirit of justice and national honor rather than according to strictly legal principles;" if it found that no survey had been made before the cession it would have been bound to decide that the claim of title was void. If the Department had adopted the treaty with Spain as its rule of decision, its conclusion must have been the same upon this question of fact, under the rules laid down by this court. Under the treaty this Government was bound to recognize complete titles, and to ratify and confirm all titles to the extent they would have been or were recognized as valid and binding by Spain. In other words, the United States were bound only to the same extent Spain would have been bound.

The rules of law applicable had been established in the decisions of this court, holding that in addition to the first concession, a survey and formal grant were necessary to invest the claimant with a title as against the United States.

United States v. *Forbes, 15 Peters,* 173 (10–705).
United States v. *Lawton,* 5 How., 11 (12–29).
De la Croix v. *Chamberlain,* 12 Wheat., 599, (6–742).
United States v. *Acosta,* 1 How., 24 (11–23).
United States v. *King,* 5 How., 773 (11–830).
Menard v. *Massey,* 8 How., 294 (12–1090).
Dautrive v. *United States,* 101 U. S., 700 (25–871).
United States v. *Miranda,* 16 Peters, 153 (10–912–13).
Maguire v. *Tyler,* 8 Wall., 650 (19–320).
United States v. *Delespine,* 15 Peters, 335 (10–758).

In the Delespine Case, which was one of the six cases reported by the land commissioners with the Fish Case, and which on the contention of appellees as to the title of the report was reported as a claim founded on a royal title (Report 3, Claim No. 6, vol. 4, American State Paper, p. 283, Duff Green ed., p. 571 G. and S. ed), this court held the lands vested in the United States for want of a survey.

We see no legal objection to the determination by the Commissioner of the General Land Office in a case brought before him upon petition of the claimant that certain acts deemed and declared by this court to be a prerequisite of title had not been performed, or that the title papers exhibited by claimant showed as a matter of mixed law and fact the omission of those prerequisites held by this court to be necessary to create a title in absolute property, and to create a private right; that the lands had not been segregated as a matter of fact and have, as a matter of law, passed to the United States, or that the claimant's form of title was not, as a matter of fact, a patent for land, but a mere first concession, which, as a matter of law, evidenced no title of private property; or that, as a matter of fact, claimants did not accept a recognition of their claim for a league square, nor present to the court their title papers for the larger area claimed, and hence, as a matter of law, an abandonment should be deemed to have taken place.

We do not pretend to say that the determination of the questions of law could not have been reviewed by proper averments in the bill, but that is not this case.

Having admitted the jurisdiction of the land department to determine whether or not the lands had been granted by Spain before the cession of the Floridas, they are bound by its adjudication made upon their own petition, in the absence of allegation of fraud or mistake of law.

Gelston v. *Hoyt*, 3 Wheat., 246.
Hopkins v. *Lee*, 6 Wheat., 113–114.

That the commissioner's reasoning may have been unsound, or that he may have assigned a wrong reason for his decision, does not operate to render the judgment any less of an estoppel, if the material issues in this case were necessarily decided by the former judgment.

The very controversy in dispute, namely, whether these lands claimed by appellants were the private lands of Fish's heirs, was tried and determined by the judgment of the land department, and its determination was a complete bar to this suit.

Aurora Hill Con. M. Co. v. *85 Mining Co.*, 34 Fed., 515.
Cragin v. *Powell*, 128 U. S., 691 (32–568).

The seventh error assigned is the court erred in decreeing any relief against the State of Florida, the real defendant in the suit.

Appellants contend that in reality this is a suit against the State of Florida.

The bill avers as follows: Your orators further show unto your honor that the State of Florida claimed title under the act of Congress * * * to certain lands

on Anastasia Island, etc. (p. 3 of record), also that the United States has issued to the State of Florida patents for the lands claimed to have been granted to Fish (p. 3 of record). The decree also declares null and void the patents to the State of Florida and also the selections and entries of the State of Florida (p. 98 of record).

The vesting in the board of trustees of the Internal Improvement Fund of the legal title to the lands owned by the State is claimed by appellees to remove this objection to the jurisdiction of the court.

The statute relied upon and set out in the bill is the act of the legislature of the State of Florida, approved January 6, A. D. 1855, entitled "An act to provide for and encourage a liberal system of internal improvement," chapter 610, Laws of Florida, and is found as sections 428 et seq., revised statutes of Florida.

The first section sets apart as a fund the proceeds of land sold and also all land granted the State under certain acts of Congress; the second section "for the purpose of securing a proper application of said fund" irrevocably vests in certain State officers as trustees the lands mentioned in the preceding section, to hold the same in trust with power to sell the same and invest the proceeds.

The master avoids the contention of appellants that the State is the real party in suit by holding that the State by creating the board of trustees of the Internal Improvement Fund and vesting in them its title to the lands permits them to sue and be sued, and therefore has no reason to complain of want of jurisdiction in the court (p. 85 of record).

No authority is cited for this holding, which is contrary to the statute creating the board and all legislation connected therewith up to the adoption of the revised statutes in A. D. 1891. It is evident throughout all the legislation relating to the subject that the board acted in all land matters as officers of the State.

See chapter 332, Laws approved January 24, 1851.
See chapter 610, Laws approved January 5, 1855.
See chapter 1138, Laws approved February 14, 1861.
See chapter 3154, Laws approved March 11, 1879.
See chapter 3155, Laws approved March 7, 1879.

The fourth section of chapter 1138 specially empowers the trustees to sue in the case provided for, and section 6 directs suit to be brought in the name of the trustees.

By chapter 3154 the governor and trustees are authorized to bring suit in the name of the State, and by chapter 3155 suit in the name of the State is directed and authorized to protect the State's interest in the lands granted the State by Congress, and to test claims against said lands, etc.

Trustees Internal Improvement Fund v. *Bailey*, 10 Fla., pp. 128, 132.
Trustees Internal Improvement Fund v. *St. Johns Ry. Co.*, 16 Fla., 543.

See remarks of Mr. Justice Westcott in *Trustees, etc.*, v. *J. P. & M. R. R. Co.* (16 Fla., p. 720), as to the residuary interest of the State in the Internal Improvement Fund.

The opinion of Mr. Justice Bradley in the case of *Florida* v. *Anderson* (91 U. S., 667) makes clearly apparent that the trustees are merely the agents of the State of

Florida, the State being the real owner of the lands in controversy in this suit. The paragraph of the opinion referred to is found upon page 297 of Book 23 of Lawyers' Co-op. edition.

That was a suit by the State of Florida, and it was objected that the State had not such an interest as to give it standing in court, because the fund was vested in the trustees of the Internal Improvement Fund. The court determined the matter in these words:

> It is apparent the trustees are merely agents of the State, invested with the legal title of the lands for their more convenient administration; that the State remains in every respect the beneficial proprietor * * * the fact that the trustees consist of the governor and other executive officers * * * shows, that they are mere public agents invested with an important branch of the State administration.

The case is cited and the interest of the State in the Internal Improvement Fund noticed in *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S., 196 (32–245).

There seems no doubt that the State of Florida, the patentee in the patents adjudged by the court to be void, is the real party in interest, the trustees being but its officers and agents and having no beneficial interest in the lands described in the patents, and that so far as the case is against the State the court had no jurisdiction by constitutional prohibition.

In conclusion it is a fact not to be lost sight of that appellants held title by patent from the United States,

which carried with it a presumption that all the legal requisites existed and had been fulfilled.

Bacon's Abrid. Prerogative, vol. 8, p. 151.
Bagnell v. *Broderick*, 13 Pet., 448.
Minter v. *Crommelin*, 18 How., 87.

Before the complainants in the court below were entitled to a decree it was necessary for them to have proved every one of the following contentions, and a failure to prove any one of them was fatal to their right to relief:

First. Jurisdiction in the court to entertain the suit and to afford the relief prayed.

Second. Possession in complainants sufficient to maintain a bill to remove a cloud on title.

Third. Title in complainants, assuming there existed a valid grant of lands in absolute property to Fish.

Fourth. A grant by the King of Spain or his lawful authorities.

Fifth. A royal title or title in absolute property.

Sixth. An official survey made of the granted lands prior to the change of flags, and a plat or other record evidence thereof.

Seventh. No bar to the action by statute, by res judicata, by laches, or otherwise.

Not only did appellees fail to prove each of these several grounds on which their right to relief was based, but they failed to prove any single one of them.

The court had no jurisdiction to entertain the suit, nor to afford the relief prayed; appellees did not have a sufficient possession of the locus in quo; the title to the

locus in quo was not in appellees; there was not any grant by the King of Spain or his lawful authorities; the grant at most was a concession, or inchoate title; there has never been an official survey or segregation of the lands alleged to have been granted, and no evidence of what lands purported to have been segregated in A. D. 1795, was before the court; and, finally, appellees were barred of their action by statute, by res judicata, and by their own laches.

We submit that appellees' evidence failed to meet, much less overcome, the presumptions in favor of the defendants as holders under a patent from the United States, and that the court erred in refusing to dismiss the complainant's bill upon each of the several grounds pointed out in the assignment of errors filed herein.

WILLIAM WHITWELL DEWHURST,
Solicitor for Appellants,
The Trustees, etc., and Horace S. Cummings.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

HENRY L. MITCHELL, GOVERNOR, ETC., et al., appellants,
v.
CHARLES M. FURMAN, AS ADMINISTRATOR, etc., et al.
No. 158.

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION TO DISMISS FOR WANT OF JURISDICTION.

Appellees contend in their motion and brief that the appeal from the decision of the circuit court should have been to the circuit court of appeals and not to this court.

Their brief sets out certain of the averments of the bill and answer and advises this court of the holdings of the master, and declares (p. 14) "that the controversy thus arose under the laws of the United States," and on page 12, alleges that neither the validity nor the construction of a treaty is drawn in question by bill, answer or other proceedings in the court below.

Appellees are estopped from the contention made upon this motion, and we think they place themselves in an

unfavorable light before the court upon the record by the position now assumed, since it was necessary for appellants to choose one of two courts of review, and if they had chosen the circuit court of appeals their appeal would have been dismissed upon the averments of complainants' bill and defendant's answer.

In their bill (Record, p. 5) complainants allege as follows:

> That this cause arises under the said treaty between the United States and Spain, which ratified and confirmed the said grant to the said Joseph Fish, under whom your orators claim title. *And the controversy involved in this cause necessarily involves the construction of said treaty.*

This allegation is coupled with the averment of the value of the land and occupies a paragraph by itself.

Appellees did not expect then that the circuit court would do other than sustain the validity of the act of May 23, 1828, and they framed their bill that they might have the final decree reviewed by this court.

Under the act of August 13, 1888, upon the case made by the bill, complainants had the choice of any one of three grounds to have maintained their bill in the circuit court: (1) That the case arose under the laws of the United States; (2) that it arose under a treaty; (3) that it was a controversy between citizens of different States.

Complainants selected as the ground of jurisdiction that the case arose under the treaty made between Spain and the United States, and their purpose in making this selection is apparent when the language of their averment is considered. (Record, p. 5.) This averment gave

jurisdiction to the circuit court. What was the purpose of the next sentence—"and the controversy involved in this cause necessarily involves the construction of said treaty?" It was placed in the bill to give this court jurisdiction on appeal and for no other purpose. The language follows the wording of the act of March 3, 1891.

Having made this averment at the outset of their case, how can they now stand before this court and argue that the construction of this treaty was not before the circuit court, and thus attempt to defeat the very jurisdiction invoked by themselves and render of no effect the language of their bill, which served as a guide and dependence to appellants in selecting the court of review?

As a matter of fact, the construction of the treaty of 1819 was before the court below and was argued by both parties in (1) the motion to dismiss for want of jurisdiction, (2) the demurrer for want of jurisdiction, (3) before the master, and (4) on exceptions to the findings and opinion of the master.

APPELLANTS' MOTION TO DISMISS IN THE COURT BELOW FOR WANT OF JURISDICTION.

Appellants set out as grounds why the court was without jurisdiction numerous grounds which involved the construction of the treaty of 1819. (1) The United States had not recognized the title to the lands set up by the bill; (2) the title set up by the bill is determinable by the Executive Department of the United States; (3) that the bill set up a claim of a political nature. (Record, p. 11.)

Upon each of the above points the construction of the treaty of 1819 was argued before the circuit court at the outset of the case. Appellees contended that the treaty as construed in the case of *United States* v. *Wiggins* (14 Peters, 334) and *United States* v. *Perchman* (7 Peters, 51) excluded from all the laws relating to the ascertainment of claims and titles to lands in Florida all perfect grants or complete titles; that these titles were confirmed by the treaty, needed no legislative sanction, and hence were not required to be presented to any board, court, or tribunal whatever. The bill is drawn on this theory, and no mention is anywhere made in the bill that the claim in controversy was ever presented to the board for ascertaining titles to land in Florida. They plant their case squarely on the effect of the treaty, and set out their title as follows: "Your orators further show unto your honors that the said tract of land was granted by the Government of Spain unto José, or Joseph, Fish * * * on or about the 19th day of June, 1795, which grant was ratified and confirmed by the United States by the treaty with Spain." (Record, p. 1.)

Appellants contended before the circuit court that upon a proper construction of the treaty and the rules of pleading complainants in their bill stated themselves out of court (Record, p. 14, and Record, p. 11, fourth ground to dismiss), that the treaty recognized complete titles and ratified and confirmed inchoate titles. This contention was renewed in the demurrer and in the answer. Paragraph 7 of the answer (Record, p. 20) avers as follows: "They deny that the treaty with Spain * * * ratified and confirmed any grant of lands in controversy."

In support of appellants' construction of the treaty, the court was cited to the language of this court in the case of *United States* v. *Wiggins*. (14 Peters, 349.) "To this class of cases the eighth article was intended to apply." "These are the imperfect claims to which the eighth article of the treaty with Spain refers."

The circuit court sustained the construction of the treaty contended for by appellees, and appellants were required to answer the bill.

Appellees cite in their brief *Muse* v. *Hotel Company* (168 U. S., 437), that it was the duty of the court to determine the category within which the alleged title fell, and that such determination would not involve the construction of the treaty of 1819.

We contend that the case is not applicable for the reason that there was a substantial dispute between the parties as to the construction of the treaty into whichever category the alleged grant was placed.

Appellants contend that complete titles were covered by the second article of the treaty; and that the act of 1828 required the title to be examined and adjudicated by the district court, whether it was a complete title or an inchoate title.

Appellees in their bill contend that complete titles were ratified by the eighth article, but before the master that they were exempt by the eighth article. (See 53d exception to opinion of the master, Record, p. 96.)

In the motion of Cummings to dismiss (Record, pp. 12, 13) one ground of the court's want of jurisdiction is that by the bill it appears appellee's claim has never been

recorded, nor the lands segregated from the public domain, and therefore the rights of the holders of the alleged title could only be determined by the political department of the Government.

Upon argument this contention was strenuously urged by appellants. It was pointed out that the courts of the country could go no further in carrying out treaty obligations than the political department of the Government had authorized. It was further contended that as the claim had been before the Fifty-second and Fifty-third Congresses, which had refused to recognize it as valid, and as the executive department had continuously refused to recognize it for sixty years, the circuit court should follow the political branch of the Government in its construction of the obligation of the treaty of 1819, and refuse to take jurisdiction of the title alleged.

THE DEMURRER TO JURISDICTION (Record, p. 14).

The demurrer set up the following matters involving the construction of the treaty: (1) The statute of 1828; (2) that the title set up by the bill had not been recognized by the United States; (3) that the title derived from Spain had never been recorded under the laws of the United States; (4) that the title must be determined by the political department of the United States. The demurrer of the railroad company (Record, p. 17) in its seventh ground set up a grant to the United States of the lands in controversy by the treaty with Spain.

On the argument of the demurrer not only was the construction of the treaty of 1819 argued and considered, but the court announced its determination as based upon

the construction by this court in *United States* v. *Wiggins* as understood by the court. Appellants contend that the court below did not correctly construe the treaty of 1819, and did not apprehend its true construction set out in the several decisions of this court.

The ninth assignment of error to this court (Record, p. 106) is because by a correct construction of the treaty with Spain, and the acts of Congress for the settlement of land claims in Florida, the statutes made by the United States barred the claim of the complainants.

THE ANSWER OF APPELLANTS.

The defendants below accepted the proffered inquiry into the construction of the treaty of 1819 made by the bill, and in paragraph 23 (Record, pp. 21 and 22) say: "They admit that the controversy involves the construction of the treaty between Spain and the United States; * * * that perfect or complete grants were recognized by the treaty with Spain, but incomplete grants were ratified by the treaty, to the same extent they would have been valid had the territory remained under the King of Spain."

While consent will not give jurisdiction where the same is wanting under the law, the fact that complainants invoked the jurisdiction which the circuit court possessed to construe the treaty of 1819 and defendants admitted upon the record the necessity for the court to pass upon the question is a sufficient estoppel against either of the parties in this court seeking to deny that the questions thus submitted were considered in the court below.

But appellants, in paragraph 27 of their answer (Record, p. 22), aver the lands in controversy were named in the treaty of 1819 as part of the royal domain "not theretofore granted;" that if Fish obtained any concession it was from a person not the governor, not by the King of Spain or his lawful authorities, named in the treaty of 1819 as the source of authority for all grants by it recognized or confirmed. (Record, pp. 19 and 24.)

This alleged grant was made by one Morales during an "alleged illness" of the governor, and there is necessarily involved in the case the construction of the language of the eighth article of the treaty "*por sus legítimas autoridades.*" Whether any person except the subdelegate of the King was embraced in the term "his lawful authorities" see twenty-first exception to the opinion of the master (Record, p. 83; see master's report, Record, pp. 68, 69, 70; see appellants' brief, pp. 88–91). Appellees contended in the circuit court that the treaty of 1819 by its eighth article ratified and confirmed their alleged title, and upon this contention the master passed judgment, and on page 77 of record says: "By a proper construction of the eighth article of the treaty (this grant) stood confirmed;" and he takes two pages of the record to argue upon and explain his construction of the treaty with Spain, and show how it differs from the treaty with Mexico. Yet appellees now say the construction of the treaty was not drawn in question in the circuit court.

Appellants also contended before the court on demurrer, and before the master, that the decision of this court, in the case of Arredondo construing the treaty of 1819

as a grant *in præsenti*, was rendered under the authority and directions conferred on this court by the act of 1828, in a suit wherein the United States consented to be sued and prescribed the rules of decision; that in a case of title resting wholly upon a grant from a foreign nation, not otherwise recognized or confirmed—save only by the treaty—the circuit court must construe the treaty as this court construed it in *Foster* v. *Nielson* (2 Peters, 314); that this court had so declared in the *Arredondo Case* (6 Peters, 743), where the court say: "Should we be called on to decide upon the validity of a title acquired by any Spanish grant not embraced by these laws we should feel bound to follow the course pursued in *Foster* v. *Nielson*." Yet, although appellees rested alone on their alleged grant, the court below refused to accept the construction of the treaty declared in *Foster* v. *Nielson*, but erroneously held that the title was ratified and confirmed by the treaty and was therefore not within the purview of the several acts of Congress relating to the ascertainment and recording of titles to lands. Not only was the language from 6 Peters, 743, above quoted, read to the court, but the New York cases (*Jackson* v. *Waters*, 12 John, 365; *Jackson* v. *Ingraham*, 4 John, 163), to the same effect, were cited in vain in argument in the court below.

While there can be no question that the concession, if genuine, was but an inchoate title, into whichever category the court placed it, we contend that the court below failed to follow the true construction of the treaty as declared by this court in the case of a title emanating from a foreign government unsupported by any act of

Congress, and committed error which is reviewable by this court and not by the circuit court of appeals.

Further, the constitutionality of the act of May 23, 1828, was directly assailed by appellees in the court below, and the master and the court held that if the twelfth section applied to complete title it was unconstitutional and void.

The master reports "it was therefore only claims within the provisions of this article [inchoate claims] which Congress had the power to legislate upon. * * * The language, therefore, in the act 'all claims' 'embraced by the treaty,' 'within the purview of the act,' can mean nothing else than inchoate or imperfect claims, with which alone the United States had the right to deal." (Record, p. 80.)

Why had not the United States a right to deal with any but inchoate titles? Because, as contended by appellees in the court below, any legislation by Congress would be unconstitutional. But Congress, by the act of May 23, 1828, did plainly and unequivocally require that *all* claims to land within the Territory of Florida *embraced by the treaty of February 22, 1819*, etc., with only two exceptions, should be adjudicated by a court of the district within which the land lay (6 Peters, p. 721), and the fourth section of the act of May 26, 1830, required "all the remaining claims which have been presented according to law and not finally acted upon to be adjudicated and finally settled by such court," and such requirements of the law were only avoided by the court holding the statute unconstitutional if it meant what it said, and

refusing to give the law force and effect. (See appellant's brief, filed, pp. 30–36, meeting the contention of appellees in the court below upon the question of the constitutionality of the act of 1828.)

The constitutionality of the law of Congress was drawn in question, and the decision of the court below upon the question was prejudicial to the rights of appellants, and the act of March 3, 1891, for that reason also gives this court jurisdiction of this appeal.

Appellants' fifth, sixth, and ninth assignments of errors bring before this court and sufficiently designate this ground of appeal.

Appellees, in their brief on the motion to dismiss, after stating that the appeal can not be sustained upon the ground relied upon by appellants, proceed to take a still greater amount of space to prove it can not be sustained upon grounds brought forward by appellees.

They must not be allowed to thus make it appear that the citizenship of Cummings and the fact that the State of Florida was the real defendant are of equal moment in determining the jurisdiction of this court with the grounds relied upon by appellants.

We plant ourselves upon the bill, motion, demurrer, answer, opinion, exceptions thereto, and assignment of errors, and say we are within the terms of the act of March 3, 1891, and present a case in which the construction of a treaty is drawn in question, and one in which the constitutionality of a law of the United States is drawn in question; and that we have been prejudiced by the construction of both treaty and law by the court below.

We submit that the case comes within the fifth section of the act of March 3, 1891, fifth subdivision; that this court has jurisdiction, and that the motion to dismiss should be denied.

WILLIAM WHITWELL DEWHURST,
Solicitor for Appellants.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

HENRY L. MITCHELL, GOVERNOR OF the State of Florida, et al., trustees of the internal improvement fund of the State of Florida et al., appellants, v. CHARLES M. FURMAN ET AL., appellees. } No. 158.

REPLY OF APPELLANTS TO BRIEF OF COUNSEL FOR APPELLEES.

Appellees say there are no authorities that hold a survey of lands (under the public land laws) to be prima facie evidence of title (p. 4, brief).

We contend the authorities are both many and convincing. We cite—

United States v. *de Repentigny*, 5 Wall., 211, text, p. 268 (18-646).

McMicken v. *United States*, 97 U. S., 204, text, p. 218 (24-952).

Mitchell v. *United States*, 9 Pet., text, pp. 743-744.

Nofire v. *United States*, 164 U. S., 660.

The brief, page 8, states there is no allegation in the bill of complaint to sustain the ground of demurrer; that the bill disclosed the matters sought to be determined were still pending before the land department.

The following is the allegation of the bill: "That entries of such selections have been allowed by the Commissioner of the General Land Office of the United States, and the same are held to be patented to the State" (p. 5 of Record).

Appellees contend it does not appear by the bill that the lands had not been surveyed as a Spanish grant. (Brief, p. 9.)

The bill describes the lands patented and selected by lots and quarters of quarter sections (pp. 3 to 5 of record). This court will take judicial notice that in the survey of lands as a private grant, there are no quarter sections and lots, but the tract is surveyed as one section and numbered above No. 36. Appellees say defendants, in the court below, failed to object in time to the reference of questions of law to the master. (Brief, p. 11.)

The following, from page 151 of record, shows the objection was made in time:

> Before going into the testimony on behalf of defendants, solicitor for defendant gives notice that he, being of the opinion that the court has no power to appoint a master with power to make return of his findings upon the law, as well as the facts, in cases of this character, hereby gives notice that before the master shall make his report he will call the matter to the attention of the court for its decision.

The court decided the reference proper, and appellants have assigned this decision for error.

Appellees contend that if the title papers showed the grant merely a concession, they were yet evidence of title to that extent (p. 15 of brief).

The moment it appeared to the court that complainants held under an inchoate title, that moment it was apparent that the court had no jurisdiction to consider it, and it was not evidence for any purpose whatever.

Burgess v. *Gray*, 16 How., 48 text, p. 62.
United States v. *King*, 3 How., text, p. 787.
Menard v. *Massey*, 8 How., text, 307.
De la Croix v. *Chamberlain*, 12 Wheat., 599.

Appellees contend that the severance of the left-hand half of the sheets, pages following pages 15 and 18, respectively, of the title papers, evidences good faith and was done to prevent interpolation. (Brief, pp. 15 and 16.)

The diagram shown on page 17 of brief reverses the position of the severed part from the left to the right hand side of the sheet, and hence does not correctly delineate the severance. On pages 321, 323, 325, 339, 340 of the Record appear copies of original Spanish documents whereon the orders of the governor are written on the left-hand third of the sheet. It is difficult to understand how the severance of this part of the sheet could be evidence of good faith if it was the custom and practice to make indorsements upon that part of the sheet, and such custom is well established, and not denied.

Appellees in their brief, pages 16, 17, maintain it was no error to reject the testimony of Dunham, county

clerk, because the county judge has the custody of the probate records.

This might be ground to refuse to admit the copy certified by the county clerk if this objection were not otherwise shown to be untenable, but the evidence rejected was the testimony of Dunham proving the copy by evidence of comparison with the original record. Any witness was competent to prove the copy by examination and comparison. (1 Green. Ev., sec. 508.)

Appellees, on page 27 of their brief, have fallen into error as to the translation of Fretot., page 285 of Record, substituting the word "then" for "thus." But we do not depend on the translation. The Spanish is printed in the record, page 272. It reads: "Vistos: Traslada á Dⁿ José Fish, así lo provefo y mando."

Así in Spanish may not be translated "then." It means "so," "thus."

Further, in the next paper in the "expediente," the petition of Fish to be granted the lands as a new settler, he says "the public proceedings should be delivered to to me in order to answer the copy which was given me of the representation of the fiscal," page 285, Record.

The fact is, at this day no one knows absolutely what was done or intended to be done in these proceedings, even conceding the papers are genuine, and this emphasizes the wisdom of Congress in requiring all title papers to "be received and adjudicated" by a court, while there were living those who were familiar with the practices under Spain.

As to the Spanish custom of recording real or royal titles, appellees have deserted their position in the lower

court. They admit on page 28 that grants that had fully matured were bound in books.

The master says this is a mere assumption (p. 74 of Record).

Appellees now contend because their title papers are stitched together they are bound, as were the grants that had fully matured, but they ignore the facts set out in the report of the register and receiver, that the records of complete titles were not only stitched together, but stitched together with all the records closely following each other, so as to make it extremely difficult to interpolate a grant (p. 170 of Record).

At every ten sheets of paper on the small books which he (the escribano) made there was a blank sheet left, on which the escribano made an index of the grants *that preceded that sheet*, and when he had enough of these sheets or small books they were bound into large books, and these indexes taken out and a general index made of the whole book Testimony of Alvarez (p. 166 of Record). The title papers offered by appellees were 21 pages stitched together and numbered No. 17, found in a bundle marked "Memorials and concessions of land" (p. 216 of Record).

Appellees contend the lists of complete titles furnished the Government by Alvarez and printed in vol. 8 of American State Papers, pages 261 to 266, is not evidence against their claim, because they do not claim under the royal order of 1790, nor under that of 1815 (p. 37 of brief). To that there are several answers.

First. No other authority for the grant of land to Fish is shown except these two royal orders, and the land

commissioners in reporting on it gave the order of 1790 as the law under which the grant was made.

Second. After Quesada had denied Fish's petition to be declared owner of any lands with his purchase of the trees, etc., at auction. (See pp. 280, 282, 285 of Record.) Fish then as a new settler prays a grant (p. 235 of Record). In all the cases a petition as a new settler is deemed to be a petition under the order of 1790. The fiscal says the governor may grant land to Fish as a new settler (p. 282 of Record). Morales says he grants to him as a new settler (p. 290 of Record).

Third. The lists printed contain *all the royal titles issued* under whatever royal authority issued. R. K. Call, the special consul appointed under the act of 1828, so reports in 1835. See vol. 8 American State Papers, p. 251 (G. & S. ed.).

Alvarez testified in answer to the question:

> "Are you acquainted with *all* the royal titles granted by Spanish governors of this province for lands to individuals?"
>
> Answer. *All* the royal titles exist in my office. I am acquainted with them in that way. I know they are in my office.
>
> Question. Were not all the royal titles granted under the royal order of 1790 and 1815?
>
> Answer. Yes. (See p. 170, vol. 8, American State Papers, also p. 157 of Record.)

Appellees show that grants were made "at a place called Tocoy," etc., and argue that the grant to Fish was with like designation (p. 30 of brief).

There is a wide difference between a grant at a place called "el Vergel" and a grant *of* the place called "el

Vergel." (See pp. 278, 283, 287, 141 of Record, for the translations; pp. 265, 270, 273, the Spanish.)

Appellees say there are various instances of head-right grants and grants on other conditions, and cite cases (p. 37 of brief).

Appellants have never denied the proposition, but say in all such cases there existed reasons for making the additional grants. The cases cited are in point.

George Fleming was given a grant as a new settler for 1,000 acres under the royal order of 1790. See volume 4, page 313, American State Papers (G. & S. ed.). Also a grant for 20,000 acres under the royal order of 1815 for services. See the real title, page 839, volume 3, American State Papers (G. & S. ed.). In each grant and real title the royal order is recited.

So also Charles Seaton was granted 1,400 acres under the royal order of 1790 and 600 acres under the royal order of 1815 for services as an officer in the militia, and 16,000 acres also under the royal order of 1815 for the benefit to accrue to the province from the erection of a sawmill, and in each grant was recited the grounds for making it. (See 12 Peters, p. 486.)

So of any and all grants that may be cited; they will be found to have been made under one or the other of the orders of 1790 or 1815.

Appellants contended, not that Fish could not have two grants, but that he could not have two grants as a new settler.

The master sought to overcome this difficulty by holding that Fish held title to Anastasia Island by reason of

his purchase at the auction sale, and that all other proceedings were but a continuation of the sale. (See pp. 67 and 68 of record.)

This contention appellees now desert, and admit that the alleged grant is upon Fish's "amended" petition (p. 31 of brief); but if on the amended petition, how avoid the conclusion that it was prayed for as a new settler?

Appellees still continue to insist, as reported by the master, that the grants to Rodriguez and Sanchez of parts of the lands alleged to have been granted to Fish are not evidence against the validity of the Fish grant, and say each of said grants was a concession (p. 37 of brief).

As shown to the master, the Rodriguez grant was perfected into a complete title in 1805, and Governor White, who made it, is reputed to have been the most careful and strict of the Spanish governors. See volume 3, page 794, American State Papers (G. & S. Ed.). See list of complete titles, page 162 of Record. The Sanchez grant was a concession, but the record shows that in 1802 the lands were vacant, hence the *title* was not granted to Fish in 1795 (p. 341 of Record).

Appellees attempt to controvert the evidence of Alvarez and the report of R. K. Call, that the largest grant made prior to 1816 that was perfected into a complete title was to McQueen, 3,275 acres (pp. 157 and 168–220 of Record), and they cite the Fates grant of 10,000 acres.

The Fates grant was an English grant, and was recognized by Spain in accordance with the treaty of 1783 between Spain and Great Britain. See volume 4, Ameri-

can State Papers, page 381 (G. & S. Ed.). It was confirmed upon a survey made in 1791 by order of the Spanish governor.

Appellants have not contended, as stated in appellees' brief, page 38, that there could not be a grant on Amelia or Anastasia Islands. They contended that if the whole of Anastasia Island was private property in 1822, Governor Coppinger would not have included it among the public domain, as he did in his letter to Colonel Butler (p. 152 of Record).

Appellees have again fallen into error on page 39 of brief, in stating that the coast survey map shows the old Spanish fort at Matanzas to be on the west side of the river.

Governor Cespedez reports to the King on the subject of the island of Santa Anastasia, and in that report, dated 1786, he says: "On the inside of the bar at Matanzas there is a round tower, which in flood tides is surrounded by sea water. It is guarded by a detachment of six soldiers, a corporal, and sergeant" (pp. 347 and 348 of Record).

Appellees declare appellant in error in contending that all complete or perfect grants (titles) must be preceded by a document styled a concession. (P. 41 of brief.)

They admit that under the royal order of 1790 such was the rule. Even this admission is contrary to the report of the master. He says, nowhere is found any set form of a Spanish grant. (P. 70 of Record.)

We contend, that in every case where a real or royal title exists it is preceded by a concession, or an order that is declared shall serve as a title in form, and we

challenge examination of the entire list printed in vol. 8, American State Papers, pages 261 to 266, for a single complete title issued without the first concession preceding it. (2 White's Recompilacion, p. 282, Record, p. 220.)

Appellees cite *Clarke's Case* (8 Pet., 467), but the grant which constituted the foundation of the claim purported to be a royal title and had the form of a royal title, was in the name of the King and by his authority, and was preceded by the first concession. (See pp. 440 to 443, 8 Pet.)

Appellees say, on page 42 of brief, the grant (to Fish) was of the whole island.

Certainly they do not find it in the record. The paper purporting to be a grant by Morales does not mention the word "island," but says he (Fish) claimed a possession at the place named "The Vergel." (P. 290 of Record.)

On page 45 of brief they admit that there was sold at the auction sale in 1792 "the place called "El Vergel."

The place called "El Vergel" could not have been Anastasia Island, which, by the report of Governor Cespedez in 1787, was shown to be well known by its name.

But appellees say the proceedings were an adjudication of the rights of Fish as heir and purchaser of his father's estate. (P. 45 of brief.)

What then must be said of the reports to Quesada by Ortega (p. 279 of Record), and of Zamorano (p. 282 of Record)?

As to the long possession of Fish, set out on page 46 of brief, it is sufficient to say that there is no evidence

that he possessed other than the place called "El Vergel," and that this did not embrace Anastasia Island is proved by the grants to Rodriguez and Sanchez and the report of Governors Cespedes and Coppinger. Governor Quesada says the title under which he possessed it (the place called El Vergel) does not appear (p. 283 of Record). In the deed to Cintra (Record, p. 365) it is said "there remained to Fish a quantity of cultivated land called El Vergel." On page 486, vol. 4, A. S. P. (Duff Green Ed.), it is translated "a piece of cultivated land" (p. 729, Gale & Seaton edition). The Spanish is "una porcion de tierra cultivada titulada el Bergel" (pp. 362–363 of Record).

Appellees contend the word "claims" as used in the act of 1828 refers to inchoate titles (p. 54 of Brief). It is sufficient to say all the acts from 1822 to 1830 must be construed in pari materia. (*United States* v. *Arredondo*, 6 Peters, 720.) That the word "claims" in all the acts refers to complete as well as inchoate titles can not be successfully denied. See *United States* v. *Arredondo*, 6 Peters, text, pp. 720 to 723, where this court expressly declares its duty to adjudicate titles valid by the law of nations (complete titles) and designates them as "claims."

Appellees say the act of 1828 was passed before this court had declared the Florida treaty self-operating, and if Congress did intend the act to apply to complete titles it was under an erroneous impression that all grants required confirmation (p. 54 of brief).

If Congress intended the act to apply to all grants, how can this court go beyond and contrary to the direction of the political department of the Government and

exempt any class of titles? We contend it is not possible to assume that this court will go contrary to the declared intent of Congress in such a matter. Further, one branch of Congress passed upon the treaty, and it may be presumed that no law was enacted without a knowledge of what the treaty required.

Appellees account for the many cases of complete titles adjudicated by this court under the act of 1828 by the fact that the suits were begun prior to the construction of the eighth article of the treaty by the court (p. 56 of brief).

Pray what was to hinder a dismissal of all appeals taken to decisions against the validity of the grant made by the lower court as soon as this construction was made known—that is, in 1832 and 1833?

Is it possible to suppose Mr. Webster, Mr. Berrien, Mr. Ogden, and Mr. White would have failed to dismiss the case of *Mitchell* v. *United States* (15 Pet.) prior to 1841 if appellees' contention was tenable?

Appellees contend that there was such a distinction between the Florida treaty and the treaties under which Louisiana and California were acquired that the ruling of the court in *Botiller* v. *Dominguez* (130 U. S., 238) does not apply to Florida grants. In other words, they undertake to make a distinction between the Florida and Louisiana grants as to the right of the owners to maintain suit upon their complete titles without a confirmation of the grant by Congress (pp. 56 and 57 of brief).

This court, in *Ainsa* v. *New Mexico and A. R. Co.* (No. 1, October term, 1899), places grants in Louisiana and Florida in the same category as to the right and power

of the grantee to sustain complete titles in the courts, and both in the same category with grants under the treaty of Guadalupe Hidalgo. Such right as to Florida grants existed until prohibited by the act of 1828 as to grants in excess of a league square, and such prohibition was upon grounds of public policy.

In *Botiller* v. *Dominguez* the court held that the act of March 3, 1851, required each and every person claiming lands in California by virtue of any right or title derived from Spain or Mexico to present his claim to commissioners, and that there was no exception made by the law and the court could make none.

So of the acts of 1828 and 1830.

The court says in *Ainsa* v. *Railway Company:* "Even grants which were complete and perfect at the time of the cession may be required by Congress to have their genuineness and their extent established by proceedings in a particular manner before they can be held valid. *But where no such proceedings are expressly required by Congress* the recognition of grants of this class in the treaty itself is sufficient to give them full effect."

That expresses appellant's contention from the beginning. Congress deemed it necessary, and it was necessary, that the validity of the title papers of all the larger grants claimed in the territory ceded by Spain should be examined and adjudicated by a court, and the extent of the boundaries ascertained and determined. Hence the act of 1828 and the bar contained in section 12 of that act.

This court says, in *United States* v. *Forbes* (15 Pet., 182), "All the public domain of Spain was ceded to this Government by the treaty of cession and the title in fee to

the same vested in the United States. From the lands thus acquired was excepted individual property.

First, the paper title to such *private property* it is our duty to investigate and ascertain, and by our decision to establish; and second, it is our duty to ascertain and cause to be surveyed and marked by definite boundaries the lands granted. (*United States* v. *Forbes Heirs*, 15 Pet., text 182.)

It was not individual or private property until the complete title was issued. (*De la Croix* v. *Chamberlain*, 12 Wheat., 599.)

It is somewhat surprising, in view of the grounds of the motion to dismiss the case, to find that appellees go into argument to show that the acts of 1828 and 1830 are unconstitutional (pp. 60 et seq. of Brief), as also their argument upon the construction of the treaty of 1819 (pp. 49 et seq. of Brief).

Appellees misstate the position of appellants as to the effect of the decision of the Land Department (p. 62 of Brief).

Appellants admit the judicial power to correct mistakes in the adjudications made by the Land Department, but claim such mistakes must be of law, and such mistakes of law must be averred in the bill and proved at the hearing.

Appellees still contend there was no evidence that Sarah Fish died testate (p. 67 of Brief). They fail to recall that Mr. Sanchez, their own witness, states that Mr. Furman was put in possession of the property "under the will"—"I mean the will of the mother of Jesse Fish" (p. 248 of Record).

Appellees say on page 69 of their brief that the defendant in the court below should have apprised them of their inability to prove title in complainants.

Appellants put in issue the title set up in the bill, and left complainants to make out their case ir that as in all other particulars. They were required by no rule ot pleading to do more.

As to the omission of section 2 of the act of 1829, Laws of Florida, regulating descents, from the brief ot appellants, this was because the section has no application under the facts. The statute contains an express proviso, which is printed with section 10, relating to title derived from the father, and was also omitted from appellants' brief, page 73. This proviso is in these words: "Provided, however, and be it further enacted," section 10, section 11. Thompson's Digest, p. 189.

On page 69 of appellees' brief the contention is made that appellants did not prove that W. J. Sanchez, son of Venancio Sanchez, is the son of Mr. Sanchez's wife, the daughter of Gabriel W. Perpall.

It was not for appellants to prove the extinction of those persons on whom the law cast the title. This must be proved by any person claiming in hostility.

Appellees have fallen into another error in the transposing of the name of the grandfather of the infant Furman on page 69 of the brief. His name is nowhere given as William Gabriel Perpall except in the deposition of Ann Furman, but always as Gabriel W. Perpall. That Mr. Perpall survived his grandson, see testimony of Ann Furman (p. 237 of Record).

A comparison of appellees' brief with the opinion reported by the master to the court will disclose that appellees have deserted numerous contentions in the court below.

Respectfully submitted.

WILLIAM WHITWELL DEWHURST,
Counsel for Appellants.

○

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, A. D. 1899.

HENRY L. MITCHELL, *et al.*, Trustees of the Internal Improvement Fund of the State of Florida, *et al.*, Appellants,

vs.

CHARLES M. FURMAN, Administrator of the Estate of Charles M. Furman, Deceased, *et al.*, appellees.

No. 158

Now come the Appellees in the above stated cause, by their counsel, and move the Court to dismiss the appeal taken in the above stated cause, upon the following grounds, *viz.*:

1. That the Court is not invested with jurisdiction, under the Act of March 3rd, 1891, to hear and determine said appeal.

2. That under the Act of March 3rd, 1891, the Circuit Court of Appeals for the Fifth Circuit of the United States is the only Court to which the cause could have been taken directly by appeal.

3. That the constitutionality of no law of the United States, nor the validity nor construction of any treaty made under its authority, was drawn in question in the determination if the cause in the Court below.

And in case the said motion to dismiss the said appeal should be denied, the appellees move the Court to affirm the decree appealed from, on the following ground, *viz.:*

That the said appeal could be retained only on the ground that the jurisdiction of the Court below was in issue, and for the purpose of determining that question alone, if it were presented by an appeal properly taken, certifying that question alone to the Court for decision, and the jurisdiction of the Court below is undoubted.

Francis P. Fleming
C. D. Rinehart
H. Bisbee

of Counsel for Appellees,

The appellants in the above stated cause, and W. W. Dewhurst, Esq., their counsel, are hereby notified that the foregoing motion will be submitted to the Supreme Court of the United States, at Washington, on Monday, the 8th day of January, A. D., 1900, unless the said cause shall be reached for hearing in regular order before said date, in which event the said motion will be argued and submitted at the same time that the said cause is argued and submitted on the merits.

Francis P. Fleming
C. D. Rinehart
H. Bisbee

of Counsel for Appellees.

I hereby accept service of the foregoing motion, and notice for submission thereof on Monday, January 8th, A. D. 1900, and also of a copy of the brief of Counsel for Appellees in support of said motion.

of Counsel for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1899.

HENRY L. MITCHELL *et al.*, Trustees, *et al.*,
Appellants,

vs.

CHARLES M. FURMAN, Administrator, *et al.*,
Appellees.

No. 158.

Brief for Appellees on Motion to Dismiss Appeal or Affirm Decree.

STATEMENT OF CASE.

In this case an appeal has been taken from a decree of the Circuit Court of the United States for the Southern District of Florida, rendered on the 6th day of April, 1898, adjudicating that certain conveyances under which the appellants claimed title to parcels of land in Anastasia Island, St. Johns County, Florida, constituted clouds upon the title of the appellees thereto, and were null and void (Record, pages 98–100).

The appellees, all of whom were citizens of South Carolina, filed their bill of complaint against appellants, Henry L. Mitchell *et al.*, as the Board of Trustees of the Internal Improvement Fund of the State of Florida, The Florida Coast Line Canal and Transportation Company, a Florida corporation, the St. Johns Railway Company, a Florida corporation, John A. Henderson, a citizen of Florida, and Horace S. Cummings, a resident of the District of Columbia, in which it was averred that the appellees held title in fee simple, as tenants in common, to certain lands in St. Johns County, Florida, known as Anastasia or Saint Anastasia Island, except that portion of said island, in area about 200 acres, known at the time of the Spanish grant hereinafter mentioned as the "King's Quarries." It was averred that the said tract of land was granted by the Government of Spain to Jose or Joseph Fish, on or about June 19, 1795, and that the grant was ratified by the United States on February 19, 1821

The appellees set forth their chain of title, claiming to derive title through the said Joseph Fish.

It was averred that upon the making of the grant to the said Joseph Fish he was placed in possession, by the Spanish authorities, of the land granted to him, and up to the time of his death, resided thereon, cultivated an orange grove and fields thereon, which were inclosed by a substantial fence, and used the wood on said island for the supply of fuel and fencing timber, and improved the said property and exercised such acts of possession and control over the said land granted him as it was capable of.

It was further averred that from the time of the death of the said Joseph Fish, up to the filing of said bill, those claiming said land through the said Fish, by themselves or their agents and tenants, occupied the Fish homestead thereon, cultivated the fields, used the wood-

lands for fuel supply and fencing timber, paid taxes on the property when assessed for taxation, and exercised such acts of ownership and possession as said property was capable of, under the claim of title thereto.

It was further averred that under the Act of Congress, approved September 28, 1850, granting to the State of Arkansas and other States certain swamp and overflowed lands within their limits, the State of Florida claimed title to certain described lands which constituted part of said grant, and that the United States Government on or about September 18, 1856, issued a patent therefor to the State of Florida. It was further averred that the title to the lands granted the State of Florida under the said Act of Congress was by an act of the Legislature of the State of Florida, approved January 5, 1855, vested in certain State officers who were constituted the Board of Trustees of the Internal Improvement Fund of said State, with power to sell and transfer the lands so granted, and that Henry L. Mitchell, Governor of Florida, and the other defendants made parties as said board of trustees were then the board of trustees of the Internal Improvement Fund of the State of Florida.

It was averred that on April 8, 1895, and June 27, 1895, two other patents were issued by the United States Government to the State of Florida, embracing certain other described lands which constituted a part of the said grant to Joseph Fish, and that the said patents were issued on selections made by the State of Florida under an Act of Congress approved June 9, 1890, entitled "An Act to confirm certain entries and to warrant locations in the former Palatka military reservation in Florida." It was also averred that certain other described lands, constituting a part of the said grant to Joseph Fish, had been selected by the State of Florida under the Act of

Congress last mentioned, the selections approved by the Commissioner of the General Land Office of the United States, and that said lands were held to be patented to the State of Florida under said Act of Congress. It was alleged that the title to the lands patented under said Act of Congress, and to those selected, when a patent therefor should be issued, would, if the United States held title thereto, vest in the said Board of Trustees of the Internal mprovemen t Fund of the State of Florida.

It was averred that the said Board of Trustees of the Internal Improvement Fund of the State of Florida, at various designated times, had executed deeds to certain described portions of the lands embraced in said grant to Joseph Fish, to the respective defendants, The Florida Coast Line Canal and Transportation Company, the St. Johns Railway Company, and John A. Henderson, and that the said Florida Coast Line Canal and Transportation Company had executed to the defendant, Horace S. Cummings, a deed to a certain described portion of the lands claimed by it under said deed from the trustees of the Internal Improvement Fund of the State of Florida.

It was averred that the respective defendants asserted title, adversely to the complainants, to the various described portions of said lands claimed by each, and that the patents from the United States, the deeds of those claiming thereunder, and the said entries and selections by the State of Florida were invalid, and did not vest any title in the defendants to the lands claimed by them, respectively; that none of the defendants were in the actual possession of said lands, or any part thereof; and that the said patents, deeds and entries, constituted a cloud upon the title of complainants.

Answers under oath were waived, and it was prayed that the said patents, entries and deeds, by and under

which the defendants, respectively, claimed, should be set aside and declared void as clouds upon the title of complainants, and that the defendants should be enjoined from taking possession of the lands claimed by virtue thereof, or disturbing the possession of complainants.

A motion to dismiss the bill for want of jurisdiction, demurrer for want of jurisdiction, and a demurrer for want of equity, were filed by the defendants, each of which was overruled, and the defendants answered (Record, pages 11–19).

The answers put in issue the substantial allegations of the bill, so far as it sought to assert title and possession of the lands in controversy in the heirs of Joseph Fish. They averred, also, that the rights of the heirs of Fish were forfeited by failure to prosecute their "claim," under the limitation barring "claims" not presented as provided in the Acts of Congress of May 23, 1828, May 26, 1830, and June 22, 1860. They also averred that one C. M. Furman, through whom complainants claimed title, presented his claim to said lands to the Land Department of the United States in 1870, and that a hearing was thereafter had before the Commissioner of the General Land Office, who on August 2, 1890, rendered a decision against the heirs of Joseph Fish, which was affirmed by the Secretary of the Interior, and this was alleged to be a former adjudication in bar of complainants' rights.

A general replication was filed, and thereupon the cause was referred to a master, with directions to take testimony and report the same with his findings of law and fact to the court (Record, page 50).

Testimony was taken, and the master reported to the court, in substance, that he found the complainants' title as stated in their bill to be well founded; and also that the complainants and those under whom they claimed title, since 1824, had at all times, through their agents,

employees, servants and tenants, possessed and actually occupied a plantation known as the "Orange Grove" on said island, a little less in area than 100 acres, and claimed title to the whole of said island, except the reservation excepted from the grant, and exercised acts of ownership and control over the same (Record, pages 53, 54, 59, 60 and 64). He also found that the grant to Joseph Fish was a complete grant, vesting title in Fish, and that the land granted, being properly segregated from the public domain prior to January 24, 1818, stood ratified and confirmed by the King of Spain and the United States by virtue of the 8th Article of the Treaty of Cession. (Record, page 63.) He found—the grant being a complete one—that the limitations in the acts of congress in regard to the prosecution of "claims" were inapplicable; and he found also that the decision of the land department of the United States was not *res adjudicata*. (Record, page 63.) In conclusion the master found and reported: "That the complainants are vested with the valid, legal, and equitable title to the lands in controversy, and were and are seized and possessed of the same, or such portions thereof as are involved in this suit, with such seizin and possession as is sufficient under the law, to maintain their bill and have the relief prayed." (Record, page 63.)

An elaborate opinion was rendered by the master, which sets forth the reasons for his conclusions. (Record, pages 65–86.)

Exceptions were filed by the defendants to the master's report, all of which were overruled by the Court, and a decree was rendered confirming the report, and granting the complainants the relief prayed. (Record, pages 98-100.)

From that decree an appeal has been prosecuted by all the defendants, except John A. Henderson, who ap-

peared and refused to join therein, and the appellees now move to dismiss the appeal on the ground that this Court has not jurisdiction to hear and determine the same, under the provisions of the Act of March 3, 1891, establishing Circuit Courts of Appeal.

ARGUMENT.

The only cases in which an appeal or writ of error can be taken directly from a Circuit Court to the Supreme Court are the following:

"In any case in which the jurisdiction of the Court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the Court below."

"From the final sentences and decrees in prize causes."

"In cases of conviction of a capital or otherwise infamous crime."

"In any case that involves the construction or application of the Constitution of the United States."

"In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question."

"In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

The appeal in the present case is not taken by virtue of the jurisdiction of the Court below being in issue, for that question alone has not been certified to the Court for decision. If the appeal can be sustained it must, therefore, be by virtue of the clause of the Act which permits

one "In any case in which the constitutionality of any law of the United States is involved, or the validity or construction of any treaty made under its authority, is drawn in question." No question as to the constitutionality of any law of the United States is involved. Is the *validity or construction* of any treaty *drawn in question?* Certainly the validity of a treaty is not drawn in question; nor is the construction of a treaty. There is no jurisdiction unless the Circuit Court was required "to pass on the question of validity or construction in disposing of the rights asserted."

Borgmeyer vs. Idler, 159 U. S., 408.

The construction of the treaty with Spain could not be drawn in question, for it had been settled by repeated adjudications of this Court, and was thus beyond question.

State vs. Bradley, 26 Fed. Rep., 289.

If the Spanish grant were a complete one, which vested title in the grantee, it stood confirmed by the treaty. If it were not, it did not.

U. S. vs. Wiggins, 14 Peters, 334.

U. S. vs. Percheman, 7 Peters, 51.

The determination of the category within which the grant fell in no way involved either the validity or construction of the treaty. The treaty was an entirely collateral matter.

Muse vs. Hotel Company, 168 U. S., text 437.

Gill vs. Oliver, 11 Howard, 529.

The Pilot, 53 Fed. Rep., 11.

It is clear, therefore, that an appeal can not be sustained by this Court, upon the ground relied upon by appellants, and the appeal should be dismissed.

THE APPEAL CAN NOT BE SUSTAINED ON THE GROUND THAT JURISDICTION OF THE COURT BELOW WAS IN ISSUE.

Supposing it should be attempted to sustain the appeal on the theory that the jurisdiction of the Court below was in issue, the Act of Congress has not been complied with by the appellants, for that question alone has not been certified to the Court for decision. On the contrary, the main grounds of complaint disclosed by the errors assigned relate solely to questions affecting the merits of the controversy, and the Court would be justified in dismissing the appeal on that ground, for there is no certificate of the Circuit Court showing that the question of its jurisdiction was in issue, nor does it clearly and distinctly appear from the record that the jurisdiction of that Court was in issue.

Maynard vs. Hecht, 151 U. S., 324.

Colvin vs. Jacksonville, 157 U. S., 368.

Building & Mfg. Co. vs. Barber, 157 U. S., 373.

The Bayonne, 159 U. S., 687.

Van Wagenen vs. Sewall, 160 U. S., 369.

There is an assignment of error, that "The Court erred in denying the motion of the defendants to dismiss the said suit, for want of jurisdiction, and in taking jurisdiction of said cause", (Record, page 104) but upon what

is this alleged error predicated? A reference to the motion to dismiss for want of jurisdiction will show that not a single ground really put in issue the jurisdiction of the Court. The motion was addressed to matters that could only properly have been available on plea or general demurrer. (Record, page 11). This, also, is true of a so-called "Demurrer to jurisdiction. (Record, page 14). There is one ground of a separate motion filed by one defendant, Horace S. Cummings, which would have raised a question as to the jurisdiction, so far as he was concerned, *viz.*, that he was a citizen of the District of Columbia, and not of a State (Record, page 13); but jurisdiction was not invoked on the ground of diverse citizenship. The bill was one to remove a cloud upon complainants' title, which arose through the United States, under the Acts of Congress mentioned, undertaking to convey the lands in controversy to the State of Florida, whereby the State's title thereto became vested in the defendants who constituted the board of trustees of the Internal Improvement Fund of the State; and the other defendants claimed through them. The controversy thus arose under the laws of the United States.

Doolan vs. Carr, 125 U. S., 618.

Spokane Falls &c. R. Co. vs. Ziegler, 167 U. S., 65.

Pierce vs. Molliken, 78 Fed. Rep., 196.

And the suit, being one to remove a cloud upon the title to real estate within the jurisdiction of the Court, could be maintained irrespective of the place of residence of any defendant.

Dick vs. Foraker, 155 U. S., 404.

Besides, jurisdiction could have been maintained on the ground of diverse citizenship. All the complainants were citizens of South Carolina, and all the defendants, except Cummings, of Florida. (Record, page 1). The controversy as to Cummings was a separable one, relating only to a separate tract of 160 acres of land described in the bill, out of a total of 7,500 acres (Record, pages 4, 99), and even were it a fact that the Court did not have jurisdiction of Cummings, that would not be available on a joint appeal by all defendants, assigning errors jointly. Had Cummings assigned error separately, the only result would be that the error, if found to exist as to him, would require the reversal of the decree as to him, while the decree would necessarily be affirmed as to the other defendants.

It might further be contended that the jurisdiction of the Court below was in issue because it is contended by the eighth error assigned that "The Court erred in decreeing any relief against the State of Florida, the real defendant sued through the trustees of the Internal Improvement Fund". (Record, page 106). Obviously, however, this objection to the jurisdiction is frivolous, for suits have been repeatedly sustained against the same trustees in the same capacity.

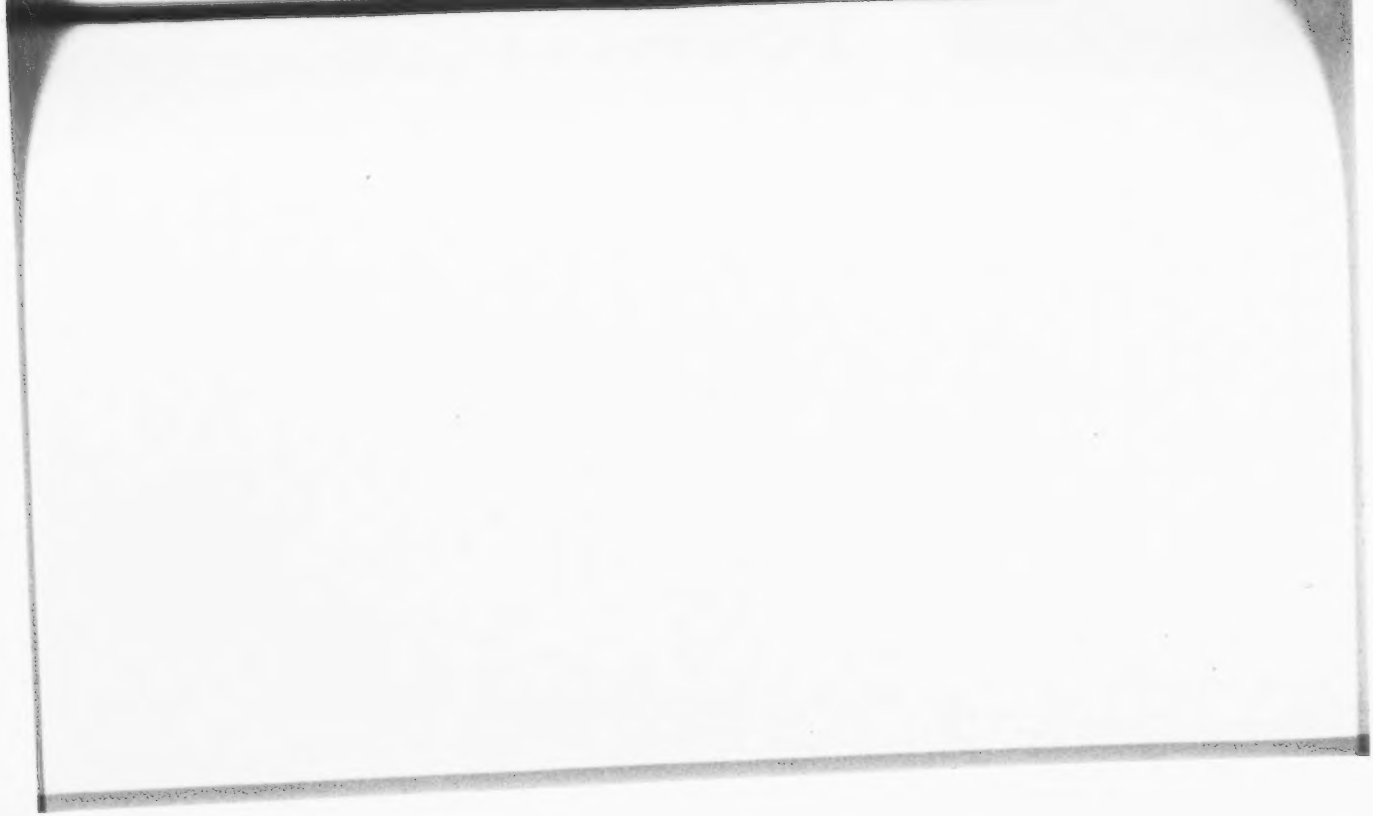
Shoecraft vs. Bloxham *et al.*, 124 U. S., 730.

Trustees vs. Greenough, 105 U. S., 527.

If the appeal should be retained as presenting a question of the jurisdiction of the Court below, the decree appealed from should be affirmed on this motion.

Respectfully submitted,

A. Bisbee
Francis P. Fleming
C. D. Rinehart
Counsel for Appellees.



No. 158 23

Reply Brf. of Disbee, Fleming & Fleming for Appellees

Filed Feb. 1, 1900.

Office Supreme Court U. S.
FILED
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JAMES H. McKE

In the Supreme Court of the United States,

OCTOBER TERM, A. D. 1899.

HENRY L. MITCHELL, GOVERNOR, *et al.*, Trustees of the Internal Improvement Fund of Florida, *et al.*, Appellants,

vs.

CHARLES M. FURMAN, as Administrator, *et al.*, Appellees.

NO. 158.

REPLY TO BRIEF OF COUNSEL FOR APPELLANTS ON MOTION TO DISMISS.

The report of the case of Muse *vs.* Arlington Hotel Co., 168 U. S., 430, in connection with the opinion of the Court below, reported 68 Fed. Rep., 637, shows that every ground, upon which the jurisdiction of this Court is invoked by appeal in the present case, is untenable; but we shall consider shortly the various grounds stated by counsel for appellants in his brief upon the motion to dismiss, which he relies upon to sustain the jurisdiction of this Court.

These grounds are five in number, *viz*:

a. Estoppel by the allegations of the pleadings.

b. That the allegations of the bill did not show a complete and perfect grant by the Spanish Government.

c. That the demurrer to the jurisdiction raised questions involving the construction of the treaty.

d. That the question of the authority of Morales to make the grant involved the construction of the treaty.

e. That the constitutionality of a law of the United States was involved because appellees contended that the Act of May 23, 1828, if by its terms applicable to complete grants, was unconstitutional.

A.

Estoppel by the Pleadings.

Jurisdiction in the Federal Courts cannot be predicated upon the allegation of a legal conclusion. The question of the jurisdiction of this Court is the first and fundamental one to be determined upon every writ of error or appeal, and must be determined by the Court for itself, without regard to the position of the parties in reference thereto.

R'y. Co. *vs.* Swan, 111 U. S., 379.

Ayers *vs.* Watson, 113 U. S., 594.

Parker *vs.* Ormsby, 141 U. S., 81.

Allegations that a cause arises under the Constitution or Laws or Treaties of the United States will not give jurisdiction, where the facts appearing show that the claim is not in reality based thereon.

Robinson *vs.* Anderson, 121 U. S., 522.

Muse *vs.* Hotel Co., *supra.*

There is nothing in this ground upon which to base jurisdiction.

B.

Contention that the bill did not show a complete and perfect grant.

A determination as to whether or not the bill showed a complete and perfect grant could not involve the construction of the treaty.

Muse *vs.* Hotel Co., *supra.*

Borgmeyer *vs.* Idler, 159 U. S., 408.

California Powder Works *vs.* Davis, 151 U.S., 389

Phillips *vs.* Mound City Assoc'n, 124 U. S., 605.

Kennedy *vs.* Hunt, 7 Howard, text 593-594.

McDough *vs.* Millaudon, 3 Howard, 693.

C.

Contention that demurrer to the jurisdiction involved the construction of the treaty.

Under this head appellants contend that the construction of the treaty was involved on these grounds:

(1) A determination of the applicability of the Act of 1828 was required.

(2) That the title had not been recognized by the United States.

(3) That it appeared that the title derived from Spain had never been recorded under the laws of the United States.

(4) That the title must be determined by the political department of the United States.

(5) That the treaty with Spain granted the lands to the United States.

(1)

A determination of the applicability of the Act of 1828 did not involve the construction of the treaty.

Muse *vs.* Hotel Co., *supra.*

(2), (3) & (4).

All these questions had nothing whatever to do with the treaty, or construction of the treaty. They related merely to the validity of the complainants' title, considered with reference to the laws of the United States, *as distinct from the treaty*, and the Court in passing thereon was not required to determine either the validity or construction of the treaty.

(5)

The treaty with Spain did not grant the lands to the United States, if they had formerly been the subject-matter of a complete grant by the Spanish government to the complainants' ancestor, through whom they claimed to derive title; and this construction is not a subject of controversy.

U. S. *vs.* Arredondo, 6 Peters, text 735.

U. S. *vs.* Perchman, 7 Peters, 51.

U. S. *vs.* Wiggins, 14 Peters, 334.

Doe *vs.* Eslava, 9 Howard, text 445.

A determination whether or not the treaty granted the lands to the United States involved simply the question whether there had or had not been a prior valid and complete grant by the Spanish government, and this in no way put the validity or construction of the treaty in issue.

Muse *vs.* Hotel Co., *supra*.

D.

Contention that the authority of Morales to make the grant involved a construction of the treaty.

The basis for this contention is that the grant was made by Morales, who, according to the finding of the master, confirmed by the Court, was acting at the time as political and military governor of the province of East Florida, owing to the illness of Quesada, then governor. (Record, page 53). A determination whether or not the grant was valid, and thus stood ratified and confirmed by the treaty, did not draw in question the construction of the treaty; and the question whether or not Morales had power, by virtue of his office, to make the grant was solely one of fact, in no way dependent upon, or involving, the construction of the treaty. In determining the question the Court merely ascertained and declared that the grant fell within the category to which the provision of the treaty applied.

Muse *vs.* Hotel Co., *supra*, text 437.

E.

Contention that there was jurisdiction because appellees contended that the limitation in the Act of 1828, if applicable to complete grants, was unconstitutional.

Under this contention appellants seek to maintain the jurisdiction of this Court, independently of the construction of the treaty, on the ground that the constitutionality of a law of the United States was drawn in question. It is difficult to perceive how this Court can have jurisdiction, at the instance of the present appellants, on the ground that if the Court below had decided in their favor it would necessarily have passed on the constitutionality of a law of the United States, when in fact that question was neither decided by the Court, nor necessarily involved in its judgment, which proceeded on the ground that, *as a matter of construction*, the law was not applicable. (Record, page 63.)

Muse *vs.* Hotel Co., *supra*, and cases there cited.

Ansboro *vs.* United States, 159 U. S., 695.

Carey *vs.* Ry. Co., 150 U. S., 170.

In re Lennon, 150 U. S., 393.

Borgmeyer *vs.* Idler, 159 U. S., *supra*.

Respectfully submitted,

HORATIO BISBEE,
FRANCIS P. FLEMING,
C. D. RINEHART,
FRANCIS P. FLEMING, JR.,
Counsel for Appellees.

No. 158 23

Brf. of Fleming, Bisbee, Fleming & Rinehart for Appellees

Office Supreme Court U. S.
FILED
FEB 1 1900
JAMES H. MCKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Feb. 1, 1900.

HENRY L. MITCHELL, AS GOVERNOR OF THE State of Florida, *et al.*, Trustees of the Internal Improvement Fund of the State of Florida, *et al.*, Appellants,

vs.

CHALES M. FURMAN, *et al.*, Appellees.

158.

BRIEF FOR APPELLEES.

FRANCIS P. FLEMING,
HORATIO BISBEE,
FRANCIS P. FLEMING, JR.,
C. D. RINEHART,
Solicitors for Appellees.

In the Supreme Court of the United States,

OCTOBER TERM, A. D., 1899.

HENRY L. MITCHELL, as Governor of the State of Florida, et al., Trustees of the Internal Improvement Fund of the State of Florida, et al., Appellants,

vs.

CHARLES M. FURMAN, et al., Appellees.

No. 158.

BRIEF FOR APPELLEES.

Before proceeding to argument of the errors assigned by the appellants, we contend that the *fourth*, *fifth*, *sixth* and *seventh* errors assigned cannot be considered under the rule.

What is stated as the *fourth* error assigned contains eighteen specifications of error in regard to the admission and rejection of evidence. These specifications do not comply with Rule 21, requiring the full substance of the evidence admitted or rejected to be set forth, and for that reason cannot be considered, independently of the fact that the same rule is violated by including eighteen distinct specifications of error under one assignment.

Shauer vs. Alterton, 151 U. S., 607.

Packet Co. vs. Clough, 20 Wall., text 543.

Newman vs. Steel Co., 80 Fed. Rep., 228.

U. S. vs. Drainage Dist., 85 Fed. Rep., 928.

Distilling Co. vs. Rheinstrom, 86 Fed. Rep., 244.

The *fifth* and *sixth* errors assigned also fail to comply with Rule 21. The former is in the following language: "The Court erred in sustaining the findings of law and fact of the master over the exceptions thereto of the defendants Mitchell et al., the trustees, etc., numbered from one to forty-two, inclusive, and printed on pages 86 to 91 of the record." (Record, p. 105; Brief, p. 8). The latter is in sustantially the same language, except that it relates to alleged error of the Court in confirming the opinion of the master, over another series of exceptions thereto, numbered from one to sixty-five inclusive, printed on pages 91 to 97 of the record. (Record, p. 105; Brief, p. 9.) The Court is invited by the former to examine forty-two distinct exceptions, embracing six pages of the printed record, the forty-second of which contains eighteen sub-divisions, without any single exception, or the action of the Court thereon, being set forth in the assignment. By the latter the Court is invited to examine sixty-five distinct exceptions, embracing seven pages of the printed record, no one of which is set forth in the assignment of error. These assignments of error will not be considered by the Court.

U. S. vs. Drainage Dist., 85 Fed. Rep., 928.

Coal Co. vs. Loan & Trust Co., 63 Fed. Rep., 891.

The *seventh* assignment of error is a general one, that "The Court erred in making the decree dated the 6th day of April, A. D. 1898, and in decreeing the relief prayed in the bill or any relief." (Record, page 108; Brief, page 9.) Such an assignment of error would necessitate a voy-

age of discovery through a voluminous record of 382 printed pages, and fails to state, as required by Rule 21, "as particularly as may be, in what the decree is alleged to be erroneous." It presents no question for review.

Scholey vs. Rew, 23 Wall., text 345.

U. S. vs. Ferguson, 78 Fed. Rep., 103.

Doe vs. Mining Co., 70 Fed. Rep., 455.

Subject to the foregoing objections we will proceed to answer the argument of counsel for the appellants.

The reference to pages, unless otherwise stated, is the printed record. Numbers in brackets [], following U. S Supreme Court citations, refer to book and page of Lawyer's Co-operative Publishing Company Edition.

The *first* assignment of error is the refusal of the Court to dismiss the bill on motion of appellants, who were defendants in the Court below.

We are not aware of precedent or rule for the practice interjected in this case by such motion to dismiss on the grounds set forth. In a case wherein the bill should show clearly on its face that the Court was without jurisdiction, we apprehend that the Court *sua sponte*, or upon suggestion, might probably dismiss the bill. But the proper method of attack on the grounds set forth, in the motion to dismiss, is by demurrer or plea. 1 Daniel Chancery, 555 630.

The Court upon the case made by the bill had jurisdiction as to citizenship of the parties, and the amount involved. Also the subject matter the removal of cloud upon title.

The grounds of the motion to dismiss are generally the same as those contained in the demurrers, the overruling the latter being the *second* assignment of error. We will therefore argue them together.

Appellants contend that the allegation of the bill, that the land, which includes that in controversy, was *granted* by the Spanish Government to Fish, under whom appellees, complainants below, claim title must be held to be merely an incomplete concession.

This Court in United States vs. Clarke 8 Pet., opinion, page 450 says: "The general word 'grant' may comprehend both the incipient and the complete title." And in Mitchel vs. U. S., 9 Pet., 711: "which words 'grants' or 'concessions' were to be construed in their broadest sense so as to comprehend all lawful acts which operated to transfer a right of property, perfect or imperfect." The authorities cited by appellants are entirely consistent with the foregoing.

Appellant in his argument ignores the allegation of the bill, p. 1, which by demurrer is admitted to be true: "that they (complainants) own and hold title in fee simple as tenants in common, to all that tract, parcel or piece of land," etc., describing it, and further "that the said tract was granted by the Government of Spain to Jose or Joseph Fish, otherwise known as Jesse Fish," from whom complainants show derivation of title. These allegations, taken together, show that the words "granted by the Government of Spain" allege the complete and not the inchoate title.

Appellants contend that the survey of lands and issuance of patents therefor was *prima facie*, a determination by the United States that the concession made to Fish had not been recognized by the Sovereign, against whose rights the claim was sought to be enforced.

While there are no authorities that hold a *survey* to lands to be *prima facie* evidence of title, we do not controvert the proposition that a *patent* of the United States is *prima facie* evidence of title in the patentee of the lands embraced therein, to which the United States had title.

But the *prima facie* case is rebutted by the allegations of the bill of a fee simple title in the Complainants under a Spanish Grant, and p. 3, "that the said patents from the United States and the said deeds of those claiming thereunder, and said entries and selections of the State of Florida, whereby the said defendants claim title respectively, to the said lands as aforesaid are invalid, and do not vest a title in the said defendants to the lands as claimed by them, respectively, as aforesaid, for the reason that the United States, under whom the said defendants claim, did not, at the time of issuance of such patents or at any other time, have or hold title to the said lands, or any part thereof, but that the title to the same is in your Orators, holding and claiming under the said grant of the Government of Spain to the said Joseph Fish, as aforesaid."

We will in another connection show that a *patent* of the United States may be successfully attacked.

It is true that complete grants were recognized by the second article of the treaty with Spain by the cession of all of East and West Florida *exclusive* of *private property*. U. S. vs. Perchman, 8 Pet. 51. But it is not the case, as appellants contend, that only incomplete grants or concessions were ratified and confirmed by the Eighth article of the treaty. The Eighth article is as follows:

> All the grants of land made before the 24th of January, 1818, by his Catholic Majesty, or by his lawful authorities, in the said territories ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty. But the owners in possession of such lands, who, by reason of the recent circumstances of the Spanish nation, and the revolutions in Europe, have been prevented from fulfilling all the

> conditions of their grants, shall complete them within the terms limited in the same, respectively from date of this treaty; in default of which, the said grants shall be null and void. All grants made since the said 24th of January, 1818, when the first proposal, on the part of his Catholic Majesty, for the cession of the Floridas was made, are hereby declared, and agreed to be, null and void.

The words "shall be ratified and confirmed" are construed to agree with the copy in Spanish which is translated, "shall remain ratified and confirmed."

U. S. vs. Arredondo, 6 Pet. 691. (8--547)

U. S. vs. Perchman, 7 Pet. 51. (8--604)

The Eighth article operated as a confirmation of property rights acquired prior to the date mentioned, whether complete or inchoate to the same extent as the right held under the Spanish Government.

In the case of a conditional grant or inchoate right, is devolved upon the United States to ascertain whether the conditions had been complied with so as to entitle the claimant to a confirmation by Congress, or the Courts, which would operate as a completion of his title.

We quote from the United States vs. Wiggins, 14 Pet. opinion 349:

> The Court held that the application resulting from the Second article being according to the law of nations, that, and the Eighth article, were consistent; and that perfect titles stood confirmed by the treaty and must be so recognized by the United States and in our Courts.

It is idle, in the face of the authorities, to contend that the allegation of the bill that the grant was ratified and confirmed by the treaty, implied a concession or incomplete grant or title.

The language in the Wiggins case that perfect titles were exempt from the provisions of the Eighth article of the treaty and that such article applied to claims whose validity depended upon the performance of conditions, in the light of the decisions cited *supra*, must be held to refer to that part of the Eighth article providing for the completion of the conditions by the grantee, and confirmation by the United States. The Court in this case holding that perfect titles were confirmed by the treaty and "need no sanction from the Legislative or Judicial departments of this country," distinguished them from grants upon condition, which were required to be investigated by the United States, and ratified by the Courts or Congress, if the conditions were found to be complied with.

Appellants cite Menard's Heirs vs. Massey, 8 How. 307, to sustain their contention that no standing in an ordinary judicial tribunal has ever been allowed on these claims until congress has confirmed them. The case cited involved a concession and not a complete grant. What the Court decided was that no suit could be maintained in an ordinary action of ejectment, or for title of any kind, on a concession and order of survey, for want of legal title to sustain it. Such claimants were not regarded as the owners of land until the real title was delivered completed.

Contrary to appellants' contention the Court holds in U. S. vs. Perchman, 7 Pet. 51, that complete titles could be asserted in the Courts independent of the 8th Article, and in U. S. vs. Arredondo, 6 Pet., opinion 741-2, the adoption of the Spanish version that grants of land "shall remain confirmed," and that then the United States by accepting the cession could assert no claim to these lands thus expressly excepted. The proprietors could bring suits to recover them without act of Congress

and any question arising would be purely a judicial one. Anisa vs. New Mexico & A. R. R. Co., U. S. Sup. Court, October term, 1899.

Appellants contend that complainants are barred by the Acts of May 23d, 1828, and May 26th, 1830.

We submit that the allegation of complete title in fee simple in the complainants is sufficient to maintain the bill, and that the question of the bar, if any, by the said act or any defect of title, did not arise at the stage of the case reached by motion to dismiss or demurrer. We will, however, on the argument of the case on the merits, fully discuss the question of a bar as involved in said acts.

There is no allegation in the bill to sustain the contention, as a ground of demurrer: that the bill disclosed that the matters sought to be determined were still pending before the Land Department of the United States, nor is that the fact.

The *second* ground of demurrer is that the bill failed to aver that the claim had been recognized by the United States. While we contend that such allegation was not necessary the bill does allege it, in the allegation of perfect title, and that the grant was ratified and confirmed by the treaty between Spain and the *United States*. The citation by appellants of Doe *ex dem.* Clark vs. Braden, 16 How., 635, does not sustain his contention. The land involved in that case was claimed under title from the Duke of Alagon, whose grant instead of being confirmed was annulled by the treaty.

Following the grounds of demurrer in their order in appellants' brief, the *third* is that the bill showed that the United States had determined the lands to be public lands, but failed to aver any fraud or mistake of law in such determination. There is no allegation in the bill that the United States had determined the lands to be

public lands. Nothing but the inference from the fact that the United States had issued patents therefor, but any presumption of title arising therefrom is rebutted as above shown by the allegation of perfect title in complainants and that the United States never had title to said lands.

The *fourth* ground is that there appeared to have been no survey as a Spanish Grant. We submit that such does not appear by the bill. The bill does not so allege, nor is such inference to be drawn therefrom, nor is the allegation of a survey necessary. The allegation of complete title in fee simple under a Spanish grant ratified by a treaty, implies everything necessary to such title.

The *fifth* ground is that the claim is barred by laches. Like most other grounds of demurrer appellants argue this on an assumption which the bill does not warrant, to-wit: that the Surveyor General was not furnished with a description of the claim to the lands with information to enable him to place it upon the township maps. There was no necessity to aver in the bill that such course was taken by the complainants or those under whom they claim. They allege a complete title.

The *sixth* ground is want of possession sufficient to maintain title to remove cloud.

The bill alleges actual possession in the complainants coming down from Joseph Fish under whom they claim, pp. 2, 3.

The bill also alleges, p. 5., that none of the said defendants are in actual possession of the said lands or any part of them.

A bill to remove cloud may be maintained when the plaintiff has no other than constructive possession resulting from legal ownership in case defendant is not in actual possession. Woodford vs. Alexander, 35 Fla., 333.

The Courts of the United States when investigating titles and decreeing on them, give effect to state legislation and state policy. Holland vs. Challen 110 U. S., 15, (28-52).

The law deems every man to be in the legal seisin and possession of land to which he has a perfect and complete title. This seisin and possession is co-extensive with his rights and continues until he is ousted thereof by actual adverse possession. U. S. vs. Arredondo, 6 Pet., p. 743 (8-566).

To same effect:

Hunnicut vs. Peyton, 102 U. S. 333. (26-113

Wilkins vs. P. C. Co., 36 Fla., 36.

Caro vs. Pensacola, 19 Fla., 766.

The case of Frost vs. Spitley, 121 U. S. 552, cited by appellants is not in point. In that case the complainant held merely the equitable title, which the Court decided was not sufficient to entitle him to the relief sought.

The *seventh* and last point raised by the demurrer is that the bill avers a grant in excess of a league square and there is no averment that the excess over a league has been confirmed by Congress, or that the lands in the controversy were not within the excess.

The allegation of complete title is sufficient answer thereto, at this stage of the case. This ground and some others raised by demurrer will be argued at length upon the merits. They come up more properly for consideration when the facts are before the Court on the bill, answer and and testimony.

We conclude the argument limited to the motion to dismiss and the demurrer, submitting to the Court that the bill alleges complete title in fee simple in complainants under a Spanish grant confirmed by the treaty, with

continuous possession from time of the grant to the present. That the United States has made patents covering portions of the said grant to the State of Florida; that the claim of title by the State is vested in certain persons, defendants, as trustees, and other defendants, their grantees. That the United States never held title to said lands, and that the said patents and deeds thereunder are clouds upon Complainant's title. And the same prayed to be removed, &c.

We respectfully submit that the bill presents a *prima facie* case for equitable relief, and that it was not error in the lower Court to deny the motion or overrule the demurrers.

The *third* error assigned is that the Court referred the whole cause, both questions of law and fact, to the Master, without the consent of the parties.

The submission to the Master, p. 50, was to take testimony and report the same to the Court, with his findings of law and fact.

Whatever force there might be in the objection of such submission to the Master, if made in time, it comes too late after the Master has acted under the order of the Court, covering a period of six months in taking testimony, at great expense to the parties. If it was proposed to object to the submission it should have been done at the time the order was made, or afterwards by motion to have it modified, prior to the taking of testimony. It will be noted that the order was dated July 27th, 1896, and the Master did not commence to take testimony until November 24th, thereafter. So there was abundant time for defendants to have made their objection to the Court, without awaiting the experiment as to how the Master would find. The parties must, therefore, be held to have

consented to the order of submission to the Master. This submission was merely in aid of the Court, the Master was directed to and did report all the testimony taken by him, and all that was offered and held to be inadmissible. So that the court had the whole matter before it, and was in no way bound by the findings of the Master, either of fact or law. The final decree was rendered after exhaustive argument by counsel.

The *fourth* assignment of error involves the ruling of the Master on admission of testimony.

(a.) The Master admitted the testimony of Mr. Sanchez as to the location of the quarries. The testimony of Mr. Sanchez shows that he was eighty-six years old at that time; that he had had charge of the Anastasia Island property as the agent of Charles M. Furman for many years. There was every reason to presume that he would have knowledge of the location of the quarries which were excepted from the grant. The question propounded to him was, (p. 250) "State as near as you can the location, if you know, of what is or was known as the quarries or King's Quarries, on Anastasia Island." His answer gives the boundaries of the quarries.

We submit that no better evidence was obtainable as to the location of the quarries. It was competent to prove the same by parol, even though the knowledge was by reputation. Boardman vs. Reed, 6 Pet 341 (8–420.) Defendants made no attempt on cross-examination to further interrogate the witness as to his knowledge of the location of the quarries.

Under the same assignment it is further claimed

(b.) That it was error to admit the proceedings before the Board of Commissioners, showing the Fish title as contained in pages 465 to 471. 4 American State Papers. (Duff Green Ed.) The documents therein

shown were duly certified to be a true and correct translation from a document in the Spanish language on file in the office of the Public Archives. 4 American State Papers (Duff Green) 470 Record p. 139.

It was proper, and the uniform custom of the Commissioners, in their investigation of Spanish titles, to set out at length in their records translations of the title papers relied on to support the claim. The whole forms part of their report.

The American State papers were held properly admitted in evidence, Watkins vs. Holman, 16 Pet. 25. 10–873)

While the Court holds that this publication does not make that evidence which intrinsically is not, adds it gives in most authentic form certain papers and documents. These authenticated copies of title papers from the public archives are intrinsically evidence.

So too, the American State papers are held properly admitted in evidence in Bryan vs. Forsyth. 9 Howard 334 (15–674).

In an ejectment suit tried by the Circuit Court of Florida, which involved the Fish title now under consideration, the said Court refused to permit the defendant to read in evidence in support of his title the same record of the Fish title in Vol. 4, American State Papers. Upon writ of error the Supreme Court of Florida (Doe ex dem. Magruder, vs. Doe, 13 Florida 602) reversing the lower court, citing authorities, p. 609, say:

> It is understood that the edition called Duff Green's edition of American State Papers was printed by authority of Congress, and was the copy referred to by the Court in the case just cited. Other editions have since been printed under similar supervision and authority, *and are equally receivable as prima facie of the contents of the originals on file in the*

archives of the Government as though they were authenticated in any other manner recognized by law.

This establishes the rule of evidence in Florida, which should be observed by the Federal Courts.

Even if the Master erred in admitting such record it was harmless error, because the same record, being a certified copy of the originals in the Surveyor-General's office, was afterwards introduced as evidence with a translation of the same.

The other objections argued by appellants apply to the legal effect of the record of the Fish title, rather than its admissibility in evidence, and will be argued in the discussion of the merits.

(c.) The introduction in evidence of the deeds from Julia R. and Irvine K. Furman, Exhibits "E" and "F," pp. 243–245, is claimed as error on the ground that the United States is in adverse possession.

The doctrine invoked by appellants has no application to the facts in this case. Neither the United States nor its grantees had adverse occupation of the property involved. It is wild, uncultivated, unoccupied land. Testimony of Stokely, pp. 142–143.

Julia R. Furman and Richard K. Furman, each held an interest in the property involved, as shown hereinafter. They had constructive possession, not only by the possession of the old homestead on the Island, but also by reason of their title, authorities cited *supra*.

(d) Appellants claim that it was error to admit in evidence Exhibit "U," pp. 266–278, which are certified copies of the original documents in Spanish in the Public Archives in the proper custody of the United States Surveyor-General of Florida, being the muniments of the Fish title, pp. 265–278. Translation of the same pp.

221–223, which is substantially the same as that contained in the American State papers. Insisting that the latter is proper and sufficient evidence of title, as it was objected to, certified copies of the originals by the Surveyor-General were introduced in evidence, out of the abundance of caution.

The time of introduction in evidence is objected to as not proper in rebuttal.

The master may permit plaintiff in rebuttal to put in further evidence to prove his case, though not strictly in rebuttal. Wooster vs. Gumbinger, 20 Federal Reports, 167.

The objection that they showed a concession, not full title, will be met hereafter. If they were but a concession they were, nevertheless, proper evidence of title to that extent. The contention that the documents, or any of them, are mutilated, has no foundation in fact. The original papers are correctly shown by the copies in evidence, are on ordinary fool's cap paper, each half sheet having writing thereon, is numbered consecutively. After the certification signed Jose de Zubizarrata, dated April 20th, 1795, record p. 287, which is the last writing on the half sheet numbered 15, the following half sheet has the outer half thereof cut off longitudinally. The same occurs following the half sheet numbered 18, on which the last writing is the attestation of Zubizarrata to the order of Ortega, dated June 13th, 1795, p. 289, the outer half of the half sheet attached being cut off longitudinally. The severed half sheet is shown by that following in this brief. The part remaining of the severed half sheet is blank. There is no reason, therefore, to presume that there was any writing on the part which was severed. The severance being longitudinal, the reasonable presumption is that this blank half sheet appearing in the papers, it was so cut by the officials, in whose custody

the records were, as to prevent the interpolation of any writing thereon, and evidences good faith instead of fraud.

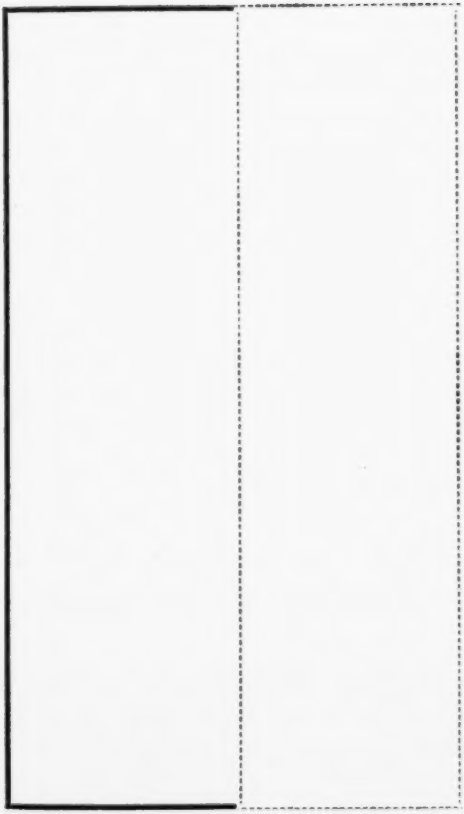
All of appellants' contentions, pages 119 to 125 of his brief and elsewhere therein, as to mutilations, erasures, interlineations, forgeries and spurious documents, have no other foundation to rest upon than these two blank halves of half sheets, which we submit carries with it no presumption against the validity or *bona fides* of the documents. The fact that these ancient muniments of title are found among the Spanish Archives in the proper custody of the Surveyor-General, is *prima facie* that they are genuine. 1 Greenleaf, Ev. Sec. 142. A translation of the same papers were before the Board of Land Commissioners made by their secretary, with their access to the originals, and they decreed the same to be a valid Spanish grant. As to the objection that there is no proof of the documents, we submit that the same would be impossible at this late day, and is not necessary.

Ancient instruments are presumed to be genuine, and prove themselves coming from the proper custody. 1 Greenleaf, Ev. Secs. 21-142.

Appellants further contend that it was error to reject the evidence of Dunham, County Clerk, by whom it was sought to prove a record of the Probate office.

Dunham was Clerk of the Circuit Court. Rec. p. 191. The record sought to be introduced was a record of Probate proceedings. Of these the County Judge has jurisdiction and custody of the records.

The Constitution of Florida, Art. V., Sec. 17, provides that "The County Judge shall have jurisdiction of the settlement of the estates of decedents and minors, to take probate of wills, to grant letters testamentary and of administration and guardianship, and to discharge the duties usually pertaining to Courts of Probate."



Revised Statutes of Florida, Sec. 1814, provides that "All wills, of which probate shall be granted, shall be deposited in the office of the County Judge, and by him fairly and correctly recorded in a book kept for that purpose, together with letters testamentary and of administration granted thereon."

Dunham was not the proper custodian of the record, and it was properly rejected.

As will be further shown, the testimony is not material. We deem it unnecessary to take up the time of the court in further answering to objections to the Master's rulings on testimony. It will readily appear that much testimony sought to be introduced by defendants, was not material to the issues in this cause, and could not bind the parties thereto, and was properly ruled out by the Master. All the evidence offered, that admitted as well as that rejected, appears in the record, and was before the Court for consideration. If evidence was rejected which should have been admitted, it will not entitle appellants to a reversal of the decree in this cause unless such evidence shows the decree erroneous.

ARGUMENT ON THE MERITS.

We will now proceed to discuss the case upon its merits, under the *fifth* and *sixth* assignments of error, to-wit: that the Court erred in sustaining the findings and opinions of the Master.

We respectfully ask attention of the Court to the report and findings of the Master, Record, p. p. 51 to 65, and to his lucid and able discussion of the case in his opinion, Record, pp. 65 to 86, taking up, as he does, the many points raised by the defendants.

The main argument of counsel for appellants is directed to a discussion of conclusions of fact found by the Master, and confirmed by the Court, which are asserted to be erroneous, but the record contains evidence upon which these conclusions can be supported, they are presumably correct, and should not be disturbed by this Court on appeal.

Furrer vs. Ferris, 145 U. S., 132;
Warren vs. Keep, 155 U. S., 265;
Davis vs. Schwartz, 155 U. S., 631;
Crawford vs. Neal, 144 U. S., 585.

We contend:

1ST. THAT THE WHOLE OF ANASTASIA ISLAND, EXCEPT THE QUARRIES, WAS GRANTED BY THE SPANISH GOVERNMENT TO JOSE FISH.

2ND. THAT THE SAID GRANT TO FISH WAS A PERFECT AND COMPLETE TITLE.

3RD. THAT PERFECT OR COMPLETE TITLES WERE CONFIRMED BY THE TREATY WITH SPAIN CEDING THE FLORIDAS.

4TH. THAT SUCH CONFIRMATION HAD THE FORCE AND EFFECT OF AN ACT OF CONGRESS.

5TH. THAT THE UNITED STATES DERIVED NO TITLE TO THE FISH GRANT BY THE CESSION OF FLORIDA.

6TH. THAT THE ACT OF MAY 23D, 1828, DID NOT OPERATE TO CONFISCATE, OR VEST IN THE UNITED STATES LANDS HELD BY PERFECT SPANISH TITLE, OR TO PREVENT THE ASSERTION OF SUCH TITLE IN THE COURTS OF THE

COUNTRY AGAINST ADVERSARY CLAIMS, NOTWITHSTANDING PROCEEDINGS WERE NOT INSTITUTED THEREON WITHIN THE TIME LIMITED BY SAID ACT, OR AS EXTENDED BY THE ACT OF MAY 26TH, 1830.

7TH. THAT THE COMPLAINANTS DERIVE TITLE FROM SAID JESSE OR JOSE FISH.

Incidental questions will be discussed as they arise under the foregoing heads.

FIRST, THE WHOLE OF ANASTASIA ISLAND EXCEPT THE QUARRIES, WAS GRANTED BY THE SPANISH GOVERNMENT TO JOSE FISH.

The title of Fish is shown by American State Papers (Duff Green Ed.), pp. 465 to 471, Record, pp. 125 to 141, also certified copy of the original documents in Spanish from the Public Archives in Surveyor General's office, pp. 265 to 278, and translation of same, pp. 278 to 291. This translation is by witness Fritot, p. 221, and is substantially the same as that found in the American State Papers.

The said record is, in substance, as follows: (Referring to the Fritot translation, commencing p. 278), Jose, or Jesse, Fish, as he is also called, petitions the Governor setting forth that he is a native and resident of the city. That at public auction of the property of his deceased father, for payment of his creditors, he purchased for $1,605.00 the "Verjel": That persons are cutting timber on the property and prays to be declared the owner of the lands, which his father possessed annexed to the Verjel, which amounted to 10,000 acres, whether as a new settler or by right of his deceased father. This appears to be dated December 2nd, 1796, but is evidently an error,

probably clerical, as the document is headed Florida, 1794. The order made thereunder by Quesada, the Governor, which is on the same sheet, is dated December 15th, 1794, and the dates thereafter are generally in regular sequence. The whole proceedings being closed July 10, 1795, when Fish was placed in possession under grant, and by order of the Governor.

Quesada, by said order following, directs the Assessor General to consult with him. The said Assessor General, Licentiate Josef de Ortega, on the same day, states: that if the memorial was directed to the preventing of persons cutting timber on the land, or to recover them according to his titles, he would consult with the Governor on the interlocutory decree, according to law, but being for a grant of the lands which his father possessed, the sale not setting forth the boundaries, it remains for the Governor to assign them to him as a new settler, which the possession of his father gives him a right to preference or to distribute them to him as the Governor thinks proper.

The Governor, on the same day, directs proof to be made. Thereupon John Leslie testified that in the time of the British, he valued the lands, houses and lots of Jose Fish, deceased, in his possession, among them was the plantation named the Verjel, which his son by the same name now claims, which he had with lawful title from the former Spanish Government, and it is known to him that he had 10,000 acres, more or less, in peaceable possession. Lorenzo Llanes, testified, in substance, the same, except as having valued the property. Manuel Solano testified to the possession of Fish (the father) on the Island of St. Anastasia, of the plantation called the Verjel, 10,000 acres; that during the time of the old Spaniards he went with Don Jose de Leon, by command of the Government, to separate the King's quarries on the island in order to grant the balance to Don Jose Fish, who solicited it, and

it was actually granted him after having made the separation. He again went, with the engineer, Don Manuel de la Roque, and two other workmen, to designate the old quarries, which they did, and set up four stakes to mark out the land of the King's on the island, Fish remaining owner of the balance as he had been until then.

The Governor then made the following order:

> St. Augustine, Florida, 12th February, 1795.
> The foregoing proof being complete and in order to issue a decree, now fully let the whole be submitted to the collector of the exchequer, that as fiscal of it, he may represent as convenient in the discharge of his functions; and with what he may say let it be brought forward.
>
> QUESADA.

The Fiscal Gonzalo, Zamorano thereupon, under date of February 27, 1795. reports: that, at the auction sale, at which Fish purchased, the boundaries of the land were not taken into consideration, only the valuation of the trees. That he is of the opinion that, although Fish proves by the evidence he presented that his father possessed during the time of the British and Spanish Governments all that land, he ought not to have a right to anything more than the sale of the orchard, that the remainder of the 10,000 acres ought to be sold as belonging to his father, for the benefit of the creditors, Fish having preference for as much as another would give, and that there should be annexed to the testimony the inventory valuation and sale of the orchard. That if Fish has occasion for public lands he finds no objection that the Governor should grant them to him as a new settler.

Governor Quesada then makes the following order:

> Let this testimony which is indicated be placed in co..in..tion and with it those proceedings returned

to the Assessor-general, that he may consult with me as to what is proper as respects the other points to which the foregoing fiscal representation refers. It is thus decreed and ordered.

Then follows a certified copy of the proceedings involving the valuation of the property and auction sale. Governor Quesada then makes the following order:

The preceding document having been examined and found correct, it was passed over to Don Jose Fish, and was thus ordered and decreed.

Fish, thereupon, following up the proceedings, presents his amended petition to have granted him the 10,000 acres which his father possessed, at the place called the Verjel, claiming that he bought the whole and would not have paid that price for the trees alone, or the land on which they stood. That he purchased, impelled by the great attachment which he had for the place where he was born, brought up and educated, the ancient residence of his parents, and his sisters, who are under his protection and charge, &c. He specifically prays a grant of "the said island."

The whole is then passed over to the fiscal by the Lincentiate Ortega, who signs in consequence of the illness of the Governor, April 17th, 1795. There next appears in the record a communication from Fish to the Governor, dated March, 1792, the day after his auction purchase, stating his purchase, asking to be put in possession of the island of the Verjel which his father possessed.

This is certified to be a true copy of the original in the proceedings of the creditors of Jose Fish, deceased.

The Fiscal attorney, Jose Antonio de Yguinez (erroneously copied in record Yginns) to whom the whole proceedings under the said Fish petition were referred,

thereupon, May 4th, 1795, reports that the Fiscal had sufficient reason for his decision of February 27th, 1795, to consider Fish only the owner of the land and trees mentioned in the valuation, because until then nothing appeared of the number of acres of which the said Verjel consisted, a defect of the appraisers, who should have given a particular designation of the land which properly belongs to the deceased Fish. That in virtue of the proof which Fish made that the "Verjel" consisted of 10,000 acres of land, and he undoubtedly was of the impression that the 10,000 acres which his father enjoyed would be included in the sale. That error or negligence of the appraisers ought not to prejudice the rights of Fish. Advises that the 10,000 acres be marked off and Fish given possessson with notice to the defender of the estate of the deceased Fish.

Then appears the following:

> Having examined the proceedings it was decreed and ordered by Senor Don Bartolome Morales, colonel of the infantry of the royal armies, Commandant of the Third Battalion of Cuba, which garrisons the city of Saint Augustine, Florida, and Political and Military Governor of it and its province, he signs it on account of illness of the incumbent, on the sixteenth day of May, 1795 ; which I attest.
>
> MORALES,
>
> Licentiate Ortega.

Before me,

JOSE DE ZUBIZARRTA

Notary of Government.

Notice was then given to the defender of the estate of Don Jose Fish.

This official was Don Rafael Saavedra de Espinosa, Attorney General, &c., who reports to the Governor that he had examined the proceedings. That Fish proceeded inadvertently in the purchase which he now seeks to

remedy. That he agrees with the well founded exposition of the first officer of the royal comptroller's office, Don Jose Antonio Yguiniz, and suggests that the Governor may grant to Don Jose Fish the 10,000 acres of land which his deceased father possessed.

Then follows the grant, to-wit:

Having examined these proceedings and seen the proof adduced in them by Don Jose Fish, it appears not only that his father, of the same name, possessed the ten thousand acres of land since the time of the old Spanish and in that of the British dominion, which possession he claims at the place named "the Veriel," which he purchased at a public sale, but also that he offered a bid for the said land under which his purchase ought to be understood, which defect by not explaining it thus and at the time, should not be prejudicial to him, and which was given cause for this litigation. His excellency says that declaring as he declares now, and consequently orders that, whether from the right that Fish has from the purchase of said land for the sum of $1,605, as shown by the public sale of the "Verjel," or by the right of ancient possession of his father of the mentioned 10,000 acres of land, or, finally, in consequence of the petition of Fish that they should be granted him as a new settler, he be placed in possession of said lands, which appears his father possessed and is already laid off with the exception of the quarries, and also was not granted to his said father, and which the King has reserved, renewing the boundaries if necessary at the expense of the interested and by the said appraiser, Don Manuel Solano, who, in time of the old and new Spanish possession of this province laid off, by order of the government, the aforesaid quarries in order to give possession of the lands which he claims to the father of the petition and which was done then, and let them be granted to him on the terms above set forth and giving him possession of the present notary,

who is commissioned for the purpose when with the said appraiser and some other workmen that may be necessary, they shall assist some one who represents the royal treasury, a person whom the minister of the royal domain may depute for this purpose; all of which shall be made to appear on the proceedings and the taxation of the costs, which the intereste l party shall satisfy and this proceeding shall be held as concluded. It was thus decreed and ordered by Senor Don Bartolome Morales, colonel of the infantry of the royal armies, commandant of the Third Battalion of Cuba, which garrisons this city of Saint Augustine, Florida, and political and military governor, pro tempore. of it and its province, he signs it on account of illness of the incumbent and with the advice of his honor, the assessor-general, on the 19th of June, 1795, which I attest.

LICENTIATE JOSEF DE ORTEGA.

BARTOLOME MORALES.

This is followed by a report which shows that in accordance with the order of the Governor, Don Manuel Solano, Don Jose Lorente, chief master of the royal works, and Don Tadeo deArribus, officer of the royal comptroller's office, and Jose de Zubizarrata, the notary, being in the plantation called the "Verjel," on the Island of Saint Anastasia, on July 10th, 1795; placed stakes marking the boundaries and separating the quarries, "Making known that all the rest was what belonged to Don Jose Fish," and gave him quiet and undisputed possession of the same without opposition.

Counsel for appellants contends, with apparent seriousness, that the words of the order of Governor Quesada of March 26th, 1795: "Having been seen that it was passed over to Don Jose Fish, and was thus ordered and

decreed" (translation in American State Papers, Record, p. 132), was a decree denying the petition of Fish, and that all following is "spurious."

If his excellency so intended, he was most unhappy in the selection of language to express his meaning. The antecedent interlocutory orders made by him are intelligible and in apt language, and in each the word *decree* or *decreed* is used. The language of this order in the Fritot translation, p. 285, is: "The preceding document having been examined and found correct, it was passed over to Don Jose Fish, and was then ordered and decreed." This we submit is the more full and intelligible translation, and should be accepted as correct. The preceding document referred to, was the record of the appraisement and auction sale, which, under the previous order, had been introduced in evidence in the proceedings. "It," i. e. *said record*, was passed over to or submitted to Fish, as he was given notice of every other step in the proceedings, previous and subsequent to this order. The language of the order will bear no other reasonable interpretation, and by no possibility is susceptible of that contended for by appellants. This having been submitted to Fish, is followed by his additional or amended petition, in which this language is used: "In consequence of the proceedings, which I am following up."

We have already submitted our views as to the claim that the documents, or any of them, are spurious or forgeries. The continuation of the proceedings are in regular order, and evidence the same care and consideration as those up to this last order of Quesada. To which we may add that the report of the Register and Receiver introduced by defendants, p. 170, referring to documents in the Public Archives, states that there were two offices under the Spanish Government, "the escribano's office,

which was regularly kept *in books stitched together* in consecutive pages, with all the records closely following each other, so as to make it extremely difficult to interpolate a grant. For the records of this office we have high respect; it seems to have been a place where all grants have been recorded when fully matured. The other, the office of the governor's secretary was of a different character; here all the papers were in loose detached sheets, easy to have been taken away or to have a forged document thrust among them without the power of detection." Mr. Dewhurst, counsel for defendants, testifies page 216, referring to the papers of Fish in the public archives: "The document is fastened together; the sheets are fastened together by thread." Said counsel states in his brief, p. 119 (which is a fact), each leaf has been marked in regular sequence. It appears, therefore, that the Fish documents instead of being spurious are of those entitled to "high respect." Had Fish undertaken to perpetrate a forgery, he would doubtless have forged the name of Quesada instead of Morales.

The master in his opinion, p. 74, says:

> The proceedings bear upon their face every stamp of genuineness, the testimony shows that they were known and officially participated in by all the members of the Governor's official household; that Fish's possession and claim was notorious and open from 1795 'til after the cession, and if improperly or surreptitiously made, it was within the province, as it was presumably within Quesada's knowledge, to have disallowed it.

The burden of proof is upon the attacking party, and must be sufficient to overcome the *prima facie* presumption arising from the face of the papers. U. S. vs. Arredondo, 6 Pet. 691.

Fraud is not to be presumed, but ought to be proved by the party who alleges it. Ib. 716.

The grant embraced the whole of Anastasia Island, except the quarries.

The plantation of the "Vergel", or orange grove, 10,000 acres, which was possessed by Fish senior, is shown to be on Anastasia Island. Testimony of Solana, p. 281. Fish in his petition, p. 286, setting forth his father's possion, prays for a grant of "the said Island." The grant has reference to the petition and other antecedent proceedings.

The land is referred to in the proceedings and grant as 10,000 at the place named the Verjel, which had been possessed by Fish senior. Under order of the Governor, the officials went on to Anastasia Island, staked of the boundaries of the quarries, put Fish in possession, "Making known that all the rest was what belonged to Don Jose Fish." The whole island contains but 8,041.58 acres. Testimony of Hopkins, p. 120, so that the call for 10,000 acres more than covered it. It was doubtless nearer that area at the time the grant was made, as there is testimony of the encroachment of the sea.

The claim of Sarah Fish, mother of the Grantee, and his heir at law, was for "the island lying in front, (i. e. to the East) of the city of St. Augustine, running South above eighteen miles, more or less, along the East Bank of the River Matanzas, known by the name of the Island of St. Anastasia, supposed to contain ten thousand acres." Acting upon this claim, the Board of Land Commissioners found it to be "a valid Spanish grant for ten thousand acres." And they report the same, p. 125, 10,000 acres, *Anastasia.* The decree of the commissioners can refer to no other than the land described in the petition of Mrs.

Fish. The contention of counsel for appellants that this grant of 10,000 acres meant but the cultivated or inclosed grounds around the Fish homestead of about 100 acres, on what he claims to be Fish Island, on which it is shown that no quarries exist, p. 149, cannot be seriously entertained.

Counsel, p. 117, of his brief, says: "It is beyond belief that one of the chief officials of the King of Spain should, over his signature in an official report, declare his belief that the proof in this record of Fish had proved that the site named the orange grove, consisted of 10,000 acres, &c." The language used by the official referred to the comptroller or Fiscal (Fritot translation, p. 288) is:

> Under the circumstances the Fiscal attorney thinks that in virtue of the proof which Fish has made, in the proceedings, he proved that the place named the Verjel consisted of 10,000 acres of land and that when he bought it he was undoubtedly under the impression that the ten thousand acres which his father enjoyed would be included in the sale.

The Spanish word "Verjel", which is retained in the Fritot translation, translated "Orange Grove", by Fatio, in the American State Papers, was undoubtedly used as the designation of the Fish possessions on Anastasia Island. An examination of Spanish grants shows that grants, containing thousands of acres of land, were designated by the name of some spot or location therein, covering but a small space: e.g. The grant to Clarke, 16,000 acres "at a place called White Spring", U. S. vs. Clarke, 8 Pet. 441. The said Spring, now known as Green Cove Spring, actually covers but a fractional part of an acre, and the limits of the grant extend five miles therefrom.

Grant to Huertas, 5,000 acres at a place called Tocoy, U. S. vs. Huertas, 8 Pet. 489.

Grant to Perchman, 2,000 acres in the place called Ockliwaha, U. S. vs. Perchman, 7 Pet. 54-55.

It is contended that Fish did not pray for a grant, but only possession. This is not supported by the evidence. In his first petition, on which the proceedings commenced, believing that he had right of title by this purchase, he prayed to be declared the owner of the land. The opinion thereafter having been rendered that he had only purchased the fruit trees, or land on which they stood, he makes his amended petition using this language: "I pray and ask your excellency to be pleased to grant me the said island as I have solicited."

Counsel for appellants contends that the alleged grant of 10,000 acres was contrary to the laws and ordinances existing in the province of Florida at that time.

He cites White's Recopilacion, 274, et. seq.; 3 American State Papers, 624–626, whereby he apparently seeks to show that lands were only granted under what are termed "head rights", that is, so many acres for the head and each member of his family and laboring hands.

Reporting the order of Governor Quesada, of November 20th, 1790, on the subject the Land Commissioners say, "it must be constructed to relate to emigrants in general, although it was made to apply to those cases of residents who had not received their titles in consequence of the prevailing uncertainty as to the quantity they should receive." 3 Am. St. Papers, 626.

In the report of the said commissioners, including this and other grants in excess of 3,500 acres, 4 Am. St, Papers, 276, record p. 122, 123, they state that they have searched in vain for any limit to the authority of the

Governors of East Florida to grant lands. Referring to the head right rules of Governor Quesada, say: "nevertheless, it is found Governor Quesada made grants in violation of this order." That the Governors were charged to promote population and to that end find them giving grants for the "purpose of agriculture, pasturage, grist and saw mills, as well as indemnity for losses, and for military services, each of which seem to be embraced in the discretionary exercises of gubernatorial power."

The authority of the Spanish governors of East Florida to grant lands without limitation, and in excess of the royal orders and rules as to head rights, has been repeatedly decided by this Court, against the contention of eminent counsel, notably Hon. R. K. Call, whose opinion is relied on by appellants.

U. S. vs. Arredondo, 6 Pet., 691 (8-547);

U. S. vs. Perchman, 7 Pet., 51 (8-604);

U. S. vs. Clarke, 8 Pet., 438 (8-1001);

U. S. vs. Rodman, 15 Pet., 130 (10-685).

The Arredondo grant was for 289,645 acres. The opinion in this case fully discusses the power of the Spanish governors and *prima facie*, validity of grants made by them. Says Justice Baldwin, 6 Pet., p. 727:

> The public acts of public officers purporting to be exercised in an official capacity, and by public authority, shall not be presumed to be an usurped, but a legitimate authority, previously given or subsequently ratified, which is equivalent. Page 728. The acts of public officers in disposing of public lands by color or claim of public authority, are evidence thereof until the contrary appears by the showing of those who oppose the title.

In the Perchman case, says Chief Justice Marshall, 7 Pet., 96:

> The attorneys contend that the royal order of the 29th of March, 1815, empowered the governor to grant so much land only as, according to the established rules, was allowed to each settler. This did not exceed one hundred acres to the head of a family, and a smaller portion for each member of it.
>
> The extraordinary facts that an application for two thousand acres should be founded on an express power to grant only one hundred; that this application should be accompanied by no explanation whatever, and that the grant should be made without hesitation, as an ordinary exercise of legitimate authority, are circumstances well calculated to excite some doubt whether the real character of the transaction is understood, and to suggest the propriety of further examination.

In the Clarke case, being a grant for 16,000 acres, the opinion of Chief Justice Marshall, 8 Pet., pp. 447 to 464, is full and elaborate on this question. The grant to Clarke refers to the royal order of October 29th, 1790, providing for grants to foreigners according to the workers of each family. Says the Chief Justice, p. 448:

> It is too plain for argument that if the validity of the grant depends upon its conformity with the royal order of 1790, it cannot be supported. But we do not think it depends upon that order.
>
> Although the order is recited the grant does not profess to be founded upon it.
>
> Page 451: These titles are to be valid to the same extent as if the territories had not been ceded. What is that extent? A grant made by a governor if authorized to grant land in his province is *prima facie* evidence that his power is not exceeded.
>
> * * * * * * *

> Such a grant under a general power would be considered as valid, even if the power to disavow it existed, until actually disavowed. It can scarcely be doubted that, so far as we may reason on general principles, that in a Spanish tribunal a grant having all the forms and sanctions required by law, not actually annulled by superior authority, would be received as evidence of title.
>
> Page 455: We do not find any limitation in the royal orders restricting the power of the governors to a league square in their grant.

In the Rodman case the grant was for five miles square (16,000 acres). The grant in this case also referred to the said royal order. Say the Court, p. 15 Pet., 138,

> That the governor had power to make the larger grant, cannot be denied. It is to be found in the laws of the Indies, in the various regulations under which they granted lands in Florida for more than forty years, sanctioned by the King of Spain, and the authorities representing him in Cuba, the Floridas and Louisiana. The power of the governor in this respect has been frequently affirmed by the decisions of this Court, in cases growing out of the eighth article of the treaty with Spain.

The grant to Fish is further attacked by appellants on the ground that it was made by *Morales*, instead of Quesada, the incumbent of the gubernatorial office. In the document making the grant, and in the preceding order, Bartolome Morales, besides his military title declares himself to be political and military governor of St. Augustine, Florida, and its province from the illness or indisposition of the governor.

We are met with the objection that there is no proof of the indisposition or illness of the governor. To this we reply that such fact is abundantly proved by the docu-

ments in evidence, not only those signed by Morales, but also statements of the Assessor General, Licentiate Ortega, in his order of April 17th, p. 286, and by Yguinez, attorney fiscal of the royal revenue, under date of May 4th, p. 287. If the documents are properly in evidence, argument as to which is made *supra*, they are proof of all material facts set forth therein.

The Morales was performing the duties of governor at the time, and that he was so regarded by the officials and others, there can be no doubt. His previous order and the decree making the grant are countersigned by the Licentiate Ortega and attested by the notary of the government, Jose de Zubizarrata, the same officers who countersigned and attested the orders of Governor Quesada. Espinoza, the attorney general and defender of the estate of Fish acts upon the order of Morales, made as political and military governor, as do the officials and Solano, whom he orders to lay off the quarries and put Fish in possession of the balance.

There is every reason for the presumption that Quesada was, or became, aware of the final determination of the proceedings which had been pending before him, and fully acquiesced in the same.

It is uniformly held that the acts of *de facto* officers are valid and cannot be attacked collaterally.

Cock vs. Halsey, 16 Pet., 71;

Mahoney Mining Co. vs. Anglo Cal. Bank, 104 U. S. 192.

Ralls County vs. Douglass, 105 U. S. 728;

Mechem Pub. Off. Secs, 318–320.

In order to prevent a hiatus, it is usual in all governments to provide for some one to discharge the duties

of the head of government, during the disability of the incumbent. U. S. Constitution, Art. 2, Sec. 5.

Constitution of Florida, Art. IV., Sec. 19.

Public officer who has acted without objection from the public is presumed, until the contrary is shown, to have been duly appointed. Throop Pub. Off. 300.

Cases already cited as to the presumption of the validity of the public acts of public officers, apply equally to this point.

"The presumption arising from a grant makes it *prima facie* evidence of the power of the officer making it, and throws the burden of proof on the party denying it." U. S. vs. Peralta, 19 How., 343.

The opinion of the Master p. 70, that the power to grant land was conferred, not upon the Governor, but the office, as to which appellants take issue, must be construed to mean that the authority was not conferred upon the *individual*, but upon the *official* exercising the duties of office. If upon the individual, and not the official, the power would still continue until revoked, whether he held office or not. And a special Royal order would have to be made each time a new Governor went in office. There is nothing to show that such course was pursued. The authorities cited by the appellants' counsel on this point, sustain our contention that the power was vested in the official and not the individual.

We admit that there was no such officer as Deputy Governor in Florida, and make no claim that Morales was such official, but for the time being, he was the acting Governor of the province of East Florida, and the lawful authority of the King, vice Quesada, disabled by illness.

It is also contended that the fact that Fish received a *head rights* grant, is evidence that the Anastasia Island grant was not made to him. As before shown, the latter is not sought or claimed as a head rights grant. There are various instances of head rights grants and grants on other considerations having been made to the same individual, e. g., head rights of 1,000 acres to George Fleming, 4 Am. State Papers, 197, and a grant to the same individual for 20,000 acres, 3 Am. State Papers, 722, which was held valid by this Court, 8 Pet., 478.

To Charles Seton, Head Rights Grant, 1,400 acres, 3 Am. State Papers, 671; 4 Am. State Papers, 282, 437–8. To the same individual grants for 600 acres and 16,000 acres, 3 Am. State Papers, 671; 4 Am. State Papers, 278–402; 5 Am. State Papers, 73–5. U. S. vs. Seton, 10 Pet., 307.

Other cases could be mentioned.

Nor is there merit in the contention of appellants that later small grants were made on Anastasia Island to Rodriguez and Sanchez, is evidence against the validity of the Fish grant. Not infrequently it is found that a piece of land is covered by two or more Spanish grants. The rule is that the oldest valid grant has the preference. Each of said grants (Rodriguez and Sanchez) was but a concession, and "without injury to another." Neither of them is involved in this litigation.

Appellants sought to introduce a list of grants made under Royal order of October 29th, 1790, to show that the Fish grant was not contained therein. Such order, it will be remembered, is the head rights order heretofore noticed: Also a list of grants under order of 1815,. pp. 159–164. This testimony was properly rejected by the Master as the grant to Fish was not a head rights grant, and made in 1795, could not be under the order of 1815. As shown in the Arredondo, Perchman, Clarke and Rod-

man cases, cited supra, the grant is not invalid because not made under either of said orders.

The contention of R. K. Call on this subject, pp. 157–158, was the same which he made against the validity of the Clarke and other grants, against which contention this court decided.

The statement that the Fish grant was the largest ever confirmed by the Spanish authorities until 1816, is an error. The Fatio grant was for 10,000, during the British occupancy, and was confirmed by the Spanish authorities, U. S. vs. Fatio, 8 Pet., 492.

But whether the largest or smallest grant is not material, under the decisions that the authority of the Governors was without limit "for more than forty years." The correspondence between Colonel Butler and Governor Coppinger at the time of the cession, pp. 152–153, was sought to be introduced in evidence and claimed by appellants to show that Anastasia Island was public property. The information sought by Colonel Butler was as to what islands were *dependent* upon the province. That merely referred to the sovereignty and not to the ownership of the land. The Governor says that all of the islands except Amelia and St. Anastasia (improperly printed *St. Augustine* in the record), are nearly without population, showing that those two islands were populated. The Court will take judicial notice that the town of Fernandina was on Amelia Island, so that the contention that the correspondence showed that there could not be a grant on one of the islands is not well taken. Defendants' own testimony contradicts this by showing other grants, Rodriguez and Sanchez on Anastasia Island.

There are other grants on the Islands of the East Coast of Florida, among which we may mention the grant to James A. Hutchinson, of an island since known as Hutchinson's Island, 4 Am. State Papers, pp. 438–439.

Counsel for appellants continuing to indulge in speculations against the probabilities of the grant, states that there were two fortified places on the Island in which the Government kept small garrisons, referring to report of Governor Cespedes, p. 347. In said report there is no mention of a fortification on the islands, but a stone tower used as a lookout for vessels, and close thereto a powder house guarded by six soldiers, etc. He also mentions another round tower inside of Matanzas bar, which in flood tides is surrounded by sea water, showing that it is not on Anastasia Island. Complainants' Exhibit "J," which is the map of the U. S. Survey, including the Southern part of Anastasia Island, shows an old Spanish fort near Matanzas inlet, on the *west* side of the river, opposite said island.

The Court will take judicial notice, as a historic and geographic fact, that the fort, which protected the City of St. Augustine was a formidable fortification for those times, at the north extremity of the old City, facing the inlet known as Fort San Marco, now as U. S. Fort Marion. This and not the old lookout tower on Anastasia Island was the protection of the city and defense of the Spanish possessions in Florida, so far as that city was involved.

It appears from the testimony of the defendants' witness, Tony Huertas, p. 205, that this old lookout house was the superstructure of the old light-house, which stood at the north end of the quarry reservation, and therefore not included in the grant.

Even a substantial fortification within the limits of a grant does not invalidate the grant as to the portion outside thereof, Mitchel vs. U. S., 9 Pet., 711.

The grant to Fish would in no wise interfere with any protection afforded by the island.

The validity of the grant to Fish was recognized and affirmed by Congress.

The claim of Sarah Fish, as shown, was for the Island of St. Anastasia, except the King's quarries. The commissioners acting thereon found it to be a valid Spanish grant, and recommended it to Congress for confirmation. The act of May 23d, 1828, confirmed all grants recommended by said commissioners for confirmation. It is true the act attempted to limit such confirmation to a league square, yet it was, nevertheless, a recognition of the validity of the grant, and, as will be shown hereafter, Congress possessed no power to divest the grantee, or those claiming under him, of any portion of his property.

Second—THAT THE SAID GRANT TO FISH WAS A PERFECT AND COMPLETE TITLE.

Appellants' Counsel introduced and sought to introduce much testimony, and makes an extended argument as to the form and what constitutes a royal title. Much of this was testimony of Alvarez and other witnesses given in litigation, to which no party of this suit was a party or privy; reports of R. K. Call and others, which were matters of opinion. Objections of Complainants thereto were properly sustained by the master. The same, however, appears in the record. Alvarez especially states the different steps or proceedings to procure a royal title. A form of a royal title to McQueen by Governor White, made in 1804 is shown as an illustration. What is technically known as a royal title appears to have been under the royal order of 1790 or that of 1815. Alvarez's testimony p. 170. "There is also a peculiarity in the phraseology of a royal title. In all grants of this nature, the legal right to grant the land is asserted." Report of Commissioners p. 123.

A royal title was under the royal order providing for grants in area corresponding to number of family and slaves for settlement. We do not controvert that the proceedings under the royal order was first the petition, then the concession or granting of the petition upon the conditions of settlement, or otherwise, or providing for a survey to segregate the land to be granted from the public domain if necessary, and when the conditions were complied with and the survey, if required, made, followed the royal title or complete grant.

The error of appellants' counsel is that all complete or perfect grants must necessarily be preceded by a document or order styled a concession. It might as well be argued that, because there are many instances of contracts to convey land upon payment of money, or the performance of other conditions, which when performed are followed by deeds of conveyance, that a deed of conveyance to be valid must be preceded by such contract. We find nothing in the Spanish law which in all cases requires a preliminary concession before the complete title.

The distinction between a perfect or complete title and a mere concession or inchoate title, is that the former is without conditions to be performed and without the necessity of a preliminary survey to segregate the land granted from the public domain, while the latter concedes to the grantee the right which, upon the performance of conditions, or a survey, when necessary, will entitle him to a full title.

In U. S. vs. Clarke, 8 Pet. we quote from the opinion p. 467: "The grant which constitutes the foundation of petitioners' claims, is a complete title subject to no condition whatever." So in U. S. vs. Wiggins, 14 Pet. 334, the distinction is drawn between perfect or complete titles and grants upon conditions to be performed. Say the Court, p. 347, "The construction or the treaty being

settled, a leading inquiry in the cases referred to was, were they perfect unconditional Spanish grants?" P. 350, "There were at the date of the treaty, very many claims whose validity depended upon the performance of conditions in consideration of which the concessions had been made and which must have been performed before Spain was bound to perfect the titles."

When a certain area was conceded but not separated from the public domain by a survey or natural boundaries, then a survey became necessary before the perfect title issued.

"A grant delivered out for survey, meant not, as with us, a perfect title, but an incipient right; which, when surveyed, required confirmation by the governor." U. S. vs. Hanson, 16 Pet. 200.

Let us subject the Fish grant to the above test. No conditions were imposed upon Fish, which were to be complied with before the grant should vest. It is true he was directed to pay the cost of the remarking of the boundaries, but that was not a condition of the grant.

Was a survey necessary at this time to segregate the land granted from the public domain? We have shown that the grant was of the whole Island with a reservation of the quarries. It is shown by unimpeached evidence in the proceedings upon which the grant is based, that the quarries had twice before been separated from the residue of the land, once at the time of the old Spaniards in order to grant the remainder to Don Jose Fish (Senior), and again the second year after Spain resumed her possession of the province by the Engineer Don Manuel de La Roque, with whom the witness Solano was. The grant itself recites that the quarries and part not granted were twice laid off. No new survey is directed, but simply that the boundaries be renewed if necessary, that is, re-establishing the stakes or

monuments which had previously marked the boundaries if found necessary to do so, and Fish given possession. The land grant was an island having a natural boundary, which as completely separated and segregated it from the public domain, the reservation of the quarries having been laid off and properly marked, as any additional survey could possibly have done. D'Auteriere vs. U. S., 101, U. S. 700 (25-869); U. S. vs. Peralta, 19 How., 343 (15-678), opinion p. 349.

Counsel for appellants seeks to discredit the marking of the quarry boundaries, claiming that it was not done by a government official, but by Solano, a private citizen. The facts are that it was done by one or more government officials, Solano being present the second and third time doubtless because of his knowledge by reason of having participated in first laying off the quarries.

Venancio Sanchez, an aged citizen, who had been in charge of the Fish grant for many years, and familiar with the property, testifies p. 250, to the lines of the quarries, the southwest corner being marked by a pile of stones. This is consistent with the description of the petition of Mrs. Fish, pp. 125, 126, who was the widow of Fish, Senior, and the mother of Fish, Junior, living on the island at the time of the grant. Harrington testifies, p. 147, after diligent search, that he found two piles of stone which were about the location placed by Sanchez. Harrington further states that he heard much talk of these piles of stone as the line of the quarries. Hopkins, as a surveyor, laid off the quarries, based upon the testimony of Sanchez and the location of the said pile of stone; pp. 115-119. Map referred to, Exhibit "L."

There is testimony that there has been quarrying and that coquina formation exists in different parts of the island, but that is no proof that all such deposits and places of quarrying were within the reservation. The

contrary is shown by the agreement between Perpall, as agent of the Fish heirs, and Lieutenant Tuttle, U. S. Engineers, made in 1833, p. 258.

The quarries could not have been of great extent as they had been marked by four stakes. There is nothing in the testimony which would justify the Court in overruling the finding of the master as to the location of the quarry. If the exception of the quarries is not sufficient and the fact of their location in the past is not sufficient to properly designate them at this time, the grantee should not be made to suffer thereby. The rule is that all exceptions and reservations in a deed are to be construed more strongly against the grantor.

2 Devlin Deeds, 979;

Jackson vs. Hudson, 3 Johns, 375; 3 Am. Dec., 500;

Klan vs. Ridgway, 86 Pa. St., 529;

Wiley vs. Sidorus, 41 Iowa, 224.

Counsel for appellant cites the Segui grant in the words, "Let there be granted to him in absolute dominion 7,000 acres of land which he petitions for under the boundaries which he points out. "Yet," he says "this grant, in which the language is immeasurably more to be taken as a conveyance of absolute title than the Fish grant, is declared by Mr. Justice Catron to be 'a concession in the first form.'" Marvin vs. U. S. 3 How., 620.

The Segui grant was for 7,000 acres which, when the concession was made, had not been segregated from the public domain by survey, and that defect was not supplied by natural boundaries as the Fish grant, with the reservation already laid off.

In considering the validity of the Fish grant, we submit that the proceedings not only established a grant to Fish, Junior, at that time, but were an *adjudication* of his rights as an heir and purchaser of his father's estate, and entitled to the property.

We find in the proceedings, the sale of the estate of Jose Fish for payment of debts, p. 263, Commission of Governor Quesada, dated January 18th, 1792, p. 283, to Solano and Leonardy for the appraisement of the estate in this he mentions, "The place called 'El Verjel,' *which belongs to the deceased*, although the title under which he held it does not appear in the proceedings." The sale of "The Verjel" to Fish, is confirmed by Governor Quesada, order of March 21st, 1792, —. 285.

Fish, in his original petition, sets forth his said purchase and prays to be declared the owner of the lands which his father possessed annexed to said Verjel which according to the deeds granted in the time of the British possessions, amounted to 10,000 acres. Then follows the other proceedings which have already been noticed, with testimony, exhibits, etc. Fish's amended petition, reports of various officials. Notice given at each stage to Fish and proper officials representing the government. All in accord with judicial proceedings, with a decree finding as facts that Fish, ancestor of the petitioner, possessed the 10,000 acres since the time of the old Spaniards and in that of the British dominion, which possession he, Fish, Junior, claims at the place named the *Verjel*, which he purchased at public sale, also that he offered a bid for the said land, under which his purchase ought to be understood, which defect by not explaining it thus and at the time should not be prejudicial to him, and which has given cause to this *litigation*. The order following making the grant in confirmation of the title of Fish and decreeing the marking of the boundaries and

placing Fish in possession, which decree was duly executed. These proceedings constituted an absolute and complete adjudication of the title of Fish, and cannot be constructed as simply a grant *de novo*, or preliminary concesion.

In this connection we desire to call attention to the claim of Francis P. Fatio for 10,000 acres. This is found in Vol. 4, Am. State Papers, p. 244. The petitioner claims under a British grant to his father, of the same name, deceased, alleging that the titles were lost during the troubles in 1812. There appears a survey of the grant in 1791. The only proof offered is by a single individual, one Marin, that he knows the tract, and that Francis P. Fatio resided thereon upwards of thirty years, that the buildings were burned by the Indians, and it is well known that the claimant was in the possession of said land. This grant was affirmed by this Court; U. S. vs. Fatio, 8 Pet. 492. The Court holds that the lands were surveyed and confirmed by the Spanish authorities and make reference to the Acts of Congress and the treaty between Spain and England, and further say: "In addition to the above laws and treaties, the petitioners have proved a possession which constitutes a title by prescription, by the laws of Spain."

By the laws of Spain, prescription for the period of ten years has the same effect as twenty by the principles of the common law. Mitchel vs. U. S., 9 Pet., 761 (9-301).

The long possession of Fish, Senior, under claim of title and the adjudication in favor of Fish, Junior, recognizing his right as a son, justifies the conclusion that there was a grant in fee to Fish, Senior, by either the old Spanish or the British government.

U. S. vs. Chaves, 149 U. S., 452 (40-215).

The Fish possession, father and son, was shown to be more than thirty years, and we respectfully submit that his possession and title was fully confirmed by the Spanish government and were more completely shown than that of Fatio.

This possession of Fish continued in those claiming under him.

Annie E. Furman (84 years old) testifies, pp. 235, 236, that Jesse Fish was living with his mother, Sarah Warner Fish, on Anastasia Island until he was killed by lightning about 1815 or 1816. Sarah Warner Fish lived on the island until her death, in 1824.

Venancio Sanchez, testifies pp. 248–250, that he had charge of the island for Charles M. Furman and other Fish heirs, for more than forty years; that he (Furman put him in charge of it. That he had charge of the servants who worked at the house place. There was an orange grove on the place. There was a stone dwelling-house, kitchen and dairy and a half-dozen or more servants' buildings. There was a fence which he had repaired, made dams. etc. This was the homestead of Jesse Fish. The old buildings were destroyed during the war, and he had wooden buildings erected. He constantly had someone living on the property. They got wood from the hammocks, and posts were gotten for fences.

There is an attempt to show by the cross examination of Sanchez, that the old homestead place is now held adversely by his son. This would not affect complainants' title to the land sued for, which does not embrace the homestead, but it is clearly shown, page 256, that the holding is not adverse to the complainants.

If the question of the present possession of the homestead were material, a Court could not sustain the delivery of possession by the agent of the owner of the property to such agent's son, in order to force a money settle-

ment, which would be the position of this witness. On the re-direct examination p. 256, Sanchez says, he continued in charge of the property superintending the interest of the heirs of Fish or Furman.

That he got the title in his son to get it out of those unfriendly to the Fish claim. That there was no antagonism between himself and his son.

The presumption is that there was no break in the possession from the death of Mrs. Fish to that of Furman claiming under the same title.

It is shown by the testimony of Stokely that the land involved in this suit is wild land, not cultivated or improved, and no one is living on it.

To avoid unnecessary repetition of authorities, we will consider the third, fourth and fifth propositions together.

Third.—THAT PERFECT OR COMPLETE TITLES WERE CONFIRMED BY THE TREATY WITH SPAIN CEDING THE FLORIDAS.

Fourth.—THAT SUCH CONFIRMATION HAD THE FORCE AND EFFECT OF AN ACT OF CONGRESS.

Fifth.—THAT THE UNITED STATES DERIVED NO TITLE TO THE FISH GRANT BY THE CESSION OF FLORIDA

U. S. vs. Arredondo, 6 Pet. 691, (8-547)

U. S. vs. Perchman, 7 Pet. 51, (8-604)

U. S. vs. Clarke, 8 Pet. 438, (8-1001)

U. S. vs. Wiggins, 14 Pet. 334, (10-481)

U. S. vs. Chaves, 152 U. S., 452, (40-215)

Anisa vs. New Mexico & A. R. R. Co., U. S Sup. Ct., Oct. Term, 1899.

McGee vs. Doe, 9 Fla. 382.

Doe ex Dem. Magruder vs. Roe, 13 Fla. 611.

Keech vs. Enrique, 28 Fla. 597.

We have already shown that this Court had adopted as the proper construction the wording of the 8th article of the treaty, in the Spanish as translated "That all grants" &c., "*shall remain confirmed.*"

6 Pet. 736-741-742

7 Pet. 51; 14 Pet, 349.

In the Arredondo case, 8 Pet. opinion 741, say the Court:

> We consider the grants were confirmed and annulled respectively and simultaneously with the ratification and confirmation of the treaty, and that when the territory was ceded. the United States had no right in any of the lands embraced in the confirmed grants."

In the Perchman case, 7 Pet. 51, the security of the right of property in case of change of sovereignty, even by conquest, is forcefully declared. "People change their allegiance" *** "but their rights of property remain undisturbed."

"The *Eighth* article of the treaty must be intended to stipulate expressly for the security to private property which the laws and usages of nations would, without express stipulation, have conferred. No construction which would impair that security, further than its posi-

tive words require, would seem to be admissible. Without it, the title of individuals would remain as valid under the new government as under the old. And those titles, so far at least as they are consummated, might be asserted in the courts of the United States, independently of this article."

We can use no language more concise or expressive to sustain our contention than to quote from the Wiggins case, 14 Pet. 349, (10-489) as follows:

> It was adjudged by this court in the case of Arredondo and Perchman (6 and 7 Peters) that the words 'shall be ratified and confirmed' in reference to perfect titles, should be construed to mean, are ratified and confirmed in the present tense. The object of the Court in these cases was to exempt them from the operation of the Eighth article, for the reason that they were perfect titles by the laws of Spain, when the treaty was made; and that when the soil and sovereignty of Florida were ceded by the Second article, private rights of property were by implication protected. The Court, in its reasoning, most justly held that such was the rule by the laws of nations, even in cases of conquest, and undoubtedly so in a case of concession; therefore, it would be an unnatural construction of the Eighth article, to hold that perfect and complete titles, at the date of the treaty, should be subject to investigation and confirmation by this government, and to reconcile the article with the law of nations, the Spanish side of the article was referred to in aid of the meaning of the American side, when it was ascertained that the Spanish side was in the present tense; whereupon the Court held that the implication resulting from the Second article, being according to the law of nations, that, and the Eighth article were consistent; and that perfect titles 'stood confirmed' by the treaty, and must be recognized by the United States and in our courts.

That the perfect titles made by Spain before the 24th of January, 1818, within the ceded territory are intrinsically valid, and exempt from the provisions of the Eighth article, is the established doctrine of this Court, and that they need no sanction from the Legislative or Judicial departments of this country.

The above doctrine is still adhered to by this Court, U. S. vs. Chaves, 159, U. S. 452, (40-215) Anisa vs. New Mex. & A. R. R. Co. October Term, 1899. It is adopted by the Courts of Florida, as the rule of property which govern titles, derived from the Spanish government. This is fully set fourth in the case of McGee vs. Doe, 9 Fla., 382, holding that the treaty itself operated as a confirmation of property rights, acquired prior to the date therein named. Say the Court, page 396, "Accordingly we are driven to decide that Peter Alba, junior, in his life time had a good and valid title, by purchase of the Spanish government, to said lots, and that the same was *confirmed* to him by the treaty."

In Doe ex dem. Magruder vs. Roe, 13 Fla., 602, involving land claimed by the defendant in that case under this grant to Fish, the Supreme Court in reference thereto, accepting the decisions of the United States Supreme Court, decided that, "The grants or concessions of land made by the Spanish government, anterior to the treaty of concession, whereby Florida was annexed to the United States, are deemed to have been ratified and confirmed by the Eighth section of the treaty, without further action by Congress."

To same effect. Keech vs. Enrique, 28 Fla., 597.

A treaty with the United States is the Supreme Law of the Land by which all Judges ore bound. U. S. Constitution, Art. VI, Clause 2.

A treaty of the United States is to be regarded in Courts of Justice as equivalent to an Act of Legislature, when it operated of itself without the aid of any legislative provision. Foster and Elam vs. Nielson, 2 Pet, 253.

The question involved in this case was the validity of a Spanish grant in the territory between the Mississippi and Perdido Rivers. The Court held against the grant, as it involved the question of territorial jurisdiction, which was properly a question of political determination, and had been determined by the political department of the Government as against the claim of Spain, by which the Courts are bound. In this case the words of the Eighth Article of the treaty "shall be ratified and confirmed" were held to import a contract, requiring further legislation to confirm titles. But this is reversed by the later decisions cited. Say the Court, in the Perchman case, 7 Pet. 89; referring to the said words of the treaty. "In the case of Foster vs. Elam (2 Pet. 253) this Court considered the words as importing contract. The Spanish part of the treaty was not then brought to our view, and we then supposed that there was no variance between them. We did not suppose that there was even a formal difference of expression in the same instrument, drawn up in the language of each party. Had these circumstances been known, we believe it would have produced the construction which we now give the article."

We respectfully submit that the Court, having jurisdiction of this cause, must be governed by the treaty by the law of the land.

Sixth.—THAT THE ACT OF MAY 23RD, 1828, DID NOT OPERATE TO CONFISCATE OR VEST IN THE UNITED STATES LANDS HELD BY PERFECT SPANISH TITLE, OR TO PREVENT THE ASSERTION OF SUCH TITLE IN THE COURTS OF THE

COUNTRY AGAINST ADVERSARY CLAIMS, NOTWITHSTANDING PROCEEDINGS WERE NOT INSTITUTED THEREON WITHIN THE TIME LIMITED BY SAID ACT, OR AS EXTENDED BY THE ACT OF MAY 26, 1330.

Section six of the said Act of 1828 provides:

> That all claims to land within the Territory of Florida, embraced by the treaty between Spain and the United States of the twenty-second of February, one thousand eight hundred and nineteen, which shall not be decided and finally settled under the foregoing provisions of this act, containing a greater quantity of land than the commissioners were authorized to decide, and above the amount confirmed by this act: and which have not been reported, as antedated or forged by said commissioners, or registerer and receiver acting as such, shall be received and adjudicated, by the Judge of the Superior Court of the District within which the land lies, upon the petition of the claimant.

Section twelve:

> That any claims to lands, tenements, or hereditaments, within the purview of this Act, which shall not be brought by petition before said Court, within one year from the passage of this Act, or which after being brought before said Court, shall, on account of the neglect or delay of the claimant, not be prosecuted to a final decision within two years, shall be forever barred, both at law and in equity; and no other action at common law, or proceedings in equity, shall ever thereafter be sustained in any Court whatever.

In each of said sections, the words "claims to land," or "lands," is used. The word "Claim," noun, is defined in Black's Law Dictionary, as "A challenge of the property or ownership of a thing which is wrongfully, withheld from the possession of the claimant." This definition is sustained by the following authorities:

Plowd. 359. 2 N. Y., 245.

Priggs vs. Pennsylvania, 16 Pet. 615, (10–1089)
6 Daly, 446.

All the authorities held it to refer to the assertion of a right of which the claimant is not in the full possession or enjoyment.

The word "Claims," therefore, as used in the Statute should be construed to refer to those titles which the Courts designate as inchoate. This Court in the litigation involving Florida, Spanish Grants, constantly speak of perfect Spanish titles. These are words of the superlative: Such titles they hold are recognized by the United States and confirmed by its treaty. They can require nothing more to render them complete. The act under consideration was passed before such decisions were rendered, holding the treaty to be self-operating, under the Spanish version, and if Congress intended the act to apply to all grants, perfect as well as inchoate, it was doubtless under the erroneous impression that all required confirmation. But, whatever impression prevailed at the time, the act must now be construed in the light of the decisions which are unambiguous, and in no uncertain language.

We quote from the Wiggins Case, 15 Pet. opinion p. 350.

> That perfect titles made by Spain before the 24th of January, 1818, within the ceded territory, are intrinsically valid, and exempt from the provisions of the Eighth article, is the established doctrine of this Court, and that they need no sanction from the Legislative or judicial departments of this country.
>
> But that there were at the date of the treaty very many claims whose validity depended upon the performance of conditions in consideration of which the concession had been made, and which must have been performed before Spain was bound to perfect the titles, is a fact rendered prominently notorious by the legislation of Congress and the litigation in the Courts

> of this Country, for now nearly twenty years. To this class of cases the Eighth article was intended to apply; and the United States were bound, after the cession of the Country, to the same extent that Spain had been bound before the ratification of the treaty, to perfect them by legislation and adjudication; and to this end the government has provided that it may be sued by the claimants in its own courts, where the claims shall be adjudged, and the equities of the claims determined and settled according to the law of nations, the stipulations of the treaty, and the proceedings under the same, and the laws and ordinances of the Government from which the claims are alleged to have been derived.

The legislation referred to as providing that the government "may be sued in its own courts," as to such conditional Florida claims, is the act of 1828.

There was no occasion or necessity for those holding under Fish, availing themselves of the privilege to sue the United States. They held a perfect title combining *possession, right of possession, and right of property.* There was nothing that they were deprived of, or that was withheld from them, or any imperfection in their title, so as to render it necessary for them to invoke the aid of the Courts.

The United States commissioners had found it valid and so reported.

The case of U. S. vs. Marvin, 3 Howard, 620, is in harmony with our contention. This was the case of the Segui grant, which was but a concession before survey and no final complete grant. Referring to the limitation in the acts of 1828 and 1830, the Court holds,

> That limitation was one year. The Courts of Florida, therefore, had no right to receive a petition for the confirmation of an *incomplete concession* after the 26th of May, 1831.

It is undoubtedly true that after the expiration of the limitation the Court could not entertain a petition against the United States under that statute. It is also true that many perfect titles were submitted to and passed upon by the Courts under the Act of 1828, and the supplementary Act of 1830. But the proceedings were instituted prior to the construction by the Court of the wording of the Eighth Article of the treaty, at a time when the impression prevailed that all grants to be valid, whether complete or otherwise, must be confirmed by Congress, or some tribunal under congressional authority. Even though the Courts had jurisdiction of a petition to determine the validity of a perfect grant, that furnishes no argument that a failure to procure such adjudication within the time limited destroyed the title, confiscated the property and vested the same in the United States.

Let us now consider the case of Botiller vs. Dominguez, 130 U. S., 238 (32-926), upon which the Secretary of the Interior based his decision, refusing to recognize the Fish grant, and on which appellants rely to sustain their claim of the bar of the statute. But for the distinction drawn by the Court in that very case, it might appear to be in conflict with the great array of the decisions of the same Court as to Florida cases. But the distinction is so clearly drawn that it appears to us strange that the Honorable Secretary should have disregarded it in his decision of a Florida grant.

This case arose by suit in ejectment under a claim to lands in California, by virtue of a Mexican grant. The Court refers to the various acts and proceedings for the ascertainment of titles under the Louisiana and Florida purchases; and commends the wisdom of the Act of 1851 to ascertain and settle private land claims in California, and cites approvingly Freemont vs. U. S., 17 How., 542, 553, holding that the California act embraces legal as

as well as inchoate or equitable titles and, "in that respect, differs from the act of the government to vest in the act of 1824, under which claims in Louisiana and Florida were decided. The jurisdiction in these cases was confined to inchoate equitable titles, which required some other act of the government to vest in the party the legal title or full ownership. If he claims to have obtained from either of the former governments a full and perfect title, he was left to assert it in the ordinary forms of law, upon the documents under which he claimed. The court had no power to sanction or confirm it when proceeding under the Act of 1824, or the subsequent laws extending its provisions."

It is claimed that the Act of 1824 referred to did not embrace Florida grants. Yet the Act of 1828 involving Florida, provided that the same should be according to the conditions, restrictions and limitations prescribed to judge and claimant under the said Act of 1824. We cannot suppose that Chief Justice Taney in Freemont vs. U. S., *inadvertently* distinguished perfect Florida grants from grants in California, or that Mr. Justice Miller, in Botiller vs. Dominguez *inadvertently* quoted approvingly said language in the Freemont case, which is in harmony with the long line of decisions involving Florida grants.

The distinction between the status of complete Florida grants and those in Louisiana and California by operation of the respective treaties, abundantly relieves the case of Botiller vs. Dominguez of inconsistency with the great array of cases, heretofore cited, adjudicating Florida grants. The treaty of Paris, April 30, 1803, ceding Louisiana, Article 3, and the treaty of Guadalupe Hidalgo, February 2, 1848, whereby California was acquired, Articles 8 and 9, provide for the enjoyment of property, but contain no words of confirmation, as in the treaty ceding Florida, which were held to be self-operating, without

legislative action. The stipulations in the French and Mexican treaties, were properly addressed to the political department of the government, and resulted in the enactment of laws for the ascertainment and confirmation of land claims, by which the Courts were bound.

The distinction is drawn in McGee vs. Doe, 9 Fla., 297, between the treaty ceding Louisiana and that ceding Florida, holding that the former imposed a political obligation on the government to perfect titles, while the latter operated as a confirmation thereof.

Story's Eq. Pleadings (10 Ed.), Section 469, citing cases.

We would also call attention to the distinction between the two statutes as to the effect of failure to proceed within the time limited. The statute of 1851 provides that "All lands the claim to which shall not have been presented to the said commissioners within two years, after the date of this act, shall be deemed, held and considered as part of the public domain of the United States." The Act of 1828, which, in this regard, is practically the same as that of 1824, contains no such language, but prohibits action at law or suit in equity thereafter. Which taking the whole statute together must be construed as applying to the right to litigate under that act, that is to sue the United States, or to sue for something that the party is out of possession, or not in the full enjoyment of.

Even if Congress had the right to forfeit ones property, which we deny, except for taxation, punishment of treason or other crime, or in the exercise of the right of eminent domain, the Courts would not sustain such action by implication, in the absence of an express statute.

> Whatever the legislative power may be, its acts ought never to be so construed as to subvert the rights of property, unless its intention so to do shall be expressed in such terms as to admit of no doubt, and to show a clear design to effect the object. No general terms intended for property to which they may be fairly applicable, and not particularly applied by the legislature—no silent, implied and constructive repeals ought ever to be understood as to divest a vested right. Rutherford vs. Green, 2 Wheat., 203 (4-220).

We insist that the United States never acquired title to the land embraced in the Fish Grant, and therefore could not transmit title to another: Hence any adverse claim of title emanating from the United States is invalid, and must be set aside.

We again invoke the Arredondo case (6 Peters) which so fully sets forth the law bearing upon Spanish grants in Florida. Say the Court, page 738, "A government is never presumed to grant land twice." The opinion citing many authorities to this proposition, pages 739 to 741.

> If the words of the treaty were that all grants 'shall remain confirmed,' then the United States by accepting the cession could assert no claim to these lands thus expressly excepted. The proprietors could bring suits to recover them without any action of Congress and any question arising would be purely a judicial one.
>
> Page 742, For these reasons and in this conviction, we consider that the grants were confirmed and annulled, respectively, simultaneously with the ratification and confirmation of the treaty, and that when the territory was ceded, the United States had no right in any of the lands embraced in the confirmed grants.

So in the Perchman case, 7 Pet., 51, without repeating at length, it is held that the second article of the treaty conforms to the principle that the rights of property are not affected by the change of sovereignty, and that the Eighth article expressly stipulates for the security to private property, which the law of nations would have conferred.

Say the Court in the Clarke case (8 Pet., p. 445).

> Neither the law of nations or the faith of the United States would justify the Legislature in authorizing these boards to annul pre-existing titles, which might consequently be asserted in the ordinary courts of the Country *against any grantee of the American Government.*

The contention of the defendant, and the decision of the Secretary of the Interior in effect, that the failure to institute proceedings under the acts of 1828 or 1830, vests the land in the United States, is contrary to the Fifth Amendment of the Constitution, that no person shall be deprived of life, liberty, or property without due process of law. The United States by treaty confirmed perfect titles, as shown above. Such titles were vested in the grantees.

In Ervine's Appeal, 16 Pa. St., 256, 55 Am. Dec. 500, the Court applying the above provision of the Constitution, says:

> If the legislature possessed an irresponsible power over every man's private estate, whether acquired by will, by deed, or by inheritance, all inducement to acquisition, to industry and economy would be removed. The principal object of government is the administration of justice and the promotion of morals. But if property is subject to the caprice of an annual assemblage of legislators acting tumultuously and without rule or precedent, and without hearing the party, stability in property will cease,

> and justice will be at an end. If the government is interceded from taking private property, even for public use without just compensation, how can the legislature take it from one man and dispose of it as they think fit? The great principle is that a man's property is his own, and that he shall enjoy it according to his pleasnre (injuring no other man), until it is proved in due process of law that it is not his but belongs to another.

We ask a consideration of this constitutional inhibition as treated by Judge Cooley, in his work on Constitutional Limitations, (Fifth Edition), Chapter 11, commencing star page 351. On page 357 he says:

> But there is no rule or principle known to our system under which private property can be taken from one person and transferred to another, for the private use and benefit of such other person, whether by general law or private enactment.

Referring to the qualifications of the application of this Constitutional provision whereby one may lose his property, the learned author mentions the statutes of limitation, where one, by lapse of time, forfeits his right to assert his title in law. On page 366, says:

> But one who is himself in the legal enjoyment of his property, cannot have his rights therein forfeited to another, for failure to bring suit against that other, within a time specified to test the validity of a claim which the latter asserts but takes no steps to enforce. It has consequently been held that a statute which, after a lapse of five years, makes a recorded deed, purporting to be executed under a statutory power, conclusive evidence of good title could not be valid as a limitation law against the original owner in possession of the land. Limitation laws cannot compel a resort to legal proceedings by

one who is already in the complete enjoyment of all he claims.

This effectually disposes of the contention that the Fish heirs are cut off by laches or the limitation in the act of 1828.

The foregoing applies with equal force to the contention that a failure to release all in excess of a league square, under the provisions of said act of 1828, operates to the prejudice of the rights of the grantee. Congress possessed no power to confiscate a part or the whole of one's property, except as a punishment for treason.

The decision of the officers of the Land Department is not res adjudicata.

It is contended by the defendants that the decision of the United States Land Department against the Fish title *is res adjudicata*, and deprives the Court of the right to adjudicate this cause.

While the law may confide to the Land Department the determination of certain questions of fact which arise in the course of the duties connected with such department, we are aware of no act which authorizes the Land Department to adjudicate titles to property, or determine the validity of Spanish grants. If there were, it would not oust the jurisdiction of a Court of Equity to correct mistakes, injustice, wrong and errors of law committed by the officers of the Land Department which invade and violate the rights of property. This is no longer an open question. All the judicial power of our Government is vested by the Constitution in the Courts.

The Courts have time and again annulled the action of the Land Department, and held invalid and set aside United States' patents issued thereon.

Cunningham vs. Ashley, 14 How., 377. (14–462)

Barnard vs. Ashley, 18 How., 43. (15–285)

Garland vs. Wynn, 20 How., 6. (15–801)

Lindsey vs. Hawes, 2 Black, 554. (17–266)

Johnson vs. Towsley, 13 Wall., 72. (20–485)

Johnson vs. Dillon, 34 Fla., 130.

In the case of Barnard vs. Ashley, supra, it was contended that the Register and Receiver having, on due proof and examination, rejected Barnard's claim of entry he is thereby concluded from setting the same up in a Court of Equity, but the Court held that the Register and Receiver do not so act in a judicial capacity that their judgment on the matter is conclusive.

In Garland vs. Wynn, and Lindsey vs. Hawes, it is held that the regulations of the Commissioners of the General Land Office, whereby a party may be heard to prove his better claim to enter land, do not oust the jurisdiction of the Courts of justice.

In Johnson vs. Towsley, the question of the jurisdiction of a Court of Equity to pass upon the action of officers of the Land Department is exhaustively discussed, and the Court lays down the law as follows:

> When the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal within the scope of its authority, is conclusive upon all others.
>
> The action of the Land Office in issuing a patent for any of the public lands, which is subject to sale by pre-emption or otherwise, is conclusive of the legal title.
>
> Courts of Equity have the power to inquire into and correct mistakes, injustice and wrong in judicial and executive action, when it invades private rights.
>
> When officers of the Land Office decide controverted questions of fact, in the absence of fraud,

> imposition or mistake their decisions on those questions are final, except as they may be reversed on appeal in that department.
>
> But when they, by misconstruction of the law, take from a party that to which he has acquired a legal right, the Courts have power to give relief.

In St. Louis Smelting Company vs. Kemps, 104, U. S. 636 (26–875), it is held that:

> Courts of Equity have power to correct mistakes and relieve against frauds and impositions; and to give the proper relief where it is clear that the officers of the Land Department have, by a mistake of law, given land to one man which belongs to another.

It is also held, page 636, that even in a case of law, the invalidity of a patent may be shown if the lands never were public property, etc., and the attempted conveyance of them by the Department would be inoperative and void, no matter with what seeming regularity the forms of law may have been observed.

See also Patterson vs. Winn, 11 Wheat., 380.

In order that a judgment or decree may be set up as a bar, it must have been made by a Court of competent jurisdiction upon the same subject matter, between the same parties and for the same purpose.

Washington, etc., Packet Company vs. Sickles, 24 How., 333 (16–650).

Aspden vs. Nixon, 4 How., 467 (11–1059).

The decision of the Commissioner of the General Land Office which was affirmed by the Secretary of the

Interior, was upon the application of C. M. Furman, one of the parties, for a patent for the Anastasia Island Grant. Such decision, therefore, in no respects comes up to the rule of *res judicata*. The Commissioner of the General Land Office was not a Court of competent jurisdictioy to adjudicate the caee at bar and grant the relief thereby sought.

Seventh. COMPLAINANTS DERIVE TITLE FROM JESSE OR JOSE FISH.

The facts are shown by the testimony of Ann E. Furman, pp. 235–236, and Charles M. Furman, pp. 112–113, and will, letters of administration and deeds, exhibits "C," "D," "E," "F."

The following law respecting descents applies: Spanish law in force when Jose Fish died—

"In default of descendants, ascendents succeed or inherit, and being those who ascend by the right or direct line, it follows first that if there are no children, grandchildren, etc., the parents succeed."

1 White Recopilation, 116.

Act of Territory of Florida, August 12th, 1822, in force at time of the deaths of Sarah Warner Fish and of her granddaughter, Jessie R. Furman, provides that: "Whenever any person having title to real estate of inheritence shall depart this life, intestate, such estate shall descend in parcenary to the male and female children in the following course, that is to say:

1. To children or their descendants, if any there be.

A statute of descents was also enacted by said Territory November 12, 1829, which re-enacted that portion of the act of 1822 above quoted, and also in regular order, as follows:

2. If there be no children, or their descendants, then to his father.

We will hereafter refer to section 11 of said act.

Act of the Legislature of Florida of 1872 provides: that if a man dies in this state without children who shall at the time of his death be possessed of real and personal property, or either, the wife will take the whole estate, or dower, at her election.

The foregoing laws of descent are still in force. R. S. of Fla., Sec. 1820.

Jesse Fish died intestate 1815, leaving his mother, Sarah Warner Fish, his sole heir.

Sarah Warner Fish died intestate 1824, leaving her granddaughter, Jessie R. Perpall, her sole heir. Said Jessie intermarried with Charles M. Furman.

Jessie R. Furman, (nee Perpall) died 1827 leaving her only child and son by this marriage, William Gabriel Furman, born 1827, her sole heir.

William Gabriel Furman died 1836, leaving his father, Charles M. Furman, his sole heir.

Charles M. Furman died in Charleston, S. C., in 1872, leaving a will whereby he devised his property to Complainant, Charles M. Furman, one-half; to Richard K. Furman, one-fourth, and to Complainants Bolivar B. Furman and Irvin K. Furman, one-quarter. Will was probated in Charleston, S. C., and recorded in St. Johns County, Florida.

Richard K. Furman died intestate without children in 1894, leaving his wife, Julia R Furman, his sole heir. Her interest in Anastasia Island is conveyed by deed to complainant, Alester G. Furman.

Interest of Irvin K. Furman is conveyed by deed to Alester G. Furman.

Counsel for appellants contend that Sarah Warner Fish left a will. An attempt is made to introduce a rec-

ord of the probate Court by testimony of the clerk of the Circuit Court, whom we have shown *supra* did not have the proper custody thereof. The master, therefore, excluded the testimony. If, however, the testimony, is received, it shows order made July 27th, 1841, seventeen years after the death of Sarah Fish, directing the executors of her estate to file an inventory and accounts. There is also mention in the American State Papers of the executors of the estate of Sarah Fish, deceased. Venancio Sanchez makes reference to the will of Sarah Fish, says he saw it in a proper office for record, and presumed it was burned when the records of the probate office were burned in 1887. He states, p. 257, that he did not know the signature or handwriting of Sarah Fish, or whether the will was probated, and could not state the contents or wording. Nothing is shown but a paper found in the probate office said to be the will, without proof of contents, signature, witnesses, probate or record.

At the time of the death of Mrs. Fish, the act of the Legislature of Florida of August, 1822, was in force, which provided :

> That, every person aged twenty-one years or upwards, being of sound mind and not a married woman, shall have power at his or her will and pleasure, by last will and testament in writing, to devise all the estate, right, title and interest in possession, remainder or reversion, which he or she hath, or at the time of his or her death shall have of, in or to lands, tenements or hereditaments, annuities or rents, issuing out of them ; goods and chattels, so as such last will and testament be signed by the testator or testatrix or by some other person in his or her presence, and by his or her directions; and moreover, if not wholly written by himself or herself, be attested by two or more competent witnesses, subscribing their names in his or her presence—saving to the widow of testators their right of dower in lands and

tenements, which shall not be prejudiced by the devise thereof.

If there was a will which had been lost or destroyed and defendants proposed to rely upon it in their defense, it should have been re-established by proceedings in equity or petition under the statute setting up a substantial copy. Revised Statutes of Florida, 1523-1535. If it should be held, however, that the testimony established a devise of Anastasia Island by Sarah Fish, we must accept the testimony of Sanchez that it was divided between Jessie Furman and her blood relations in Greenville. Jessie Furman, as shown, was the granddaughter of Mrs. Fish. It does not appear that at the time of the devise or death of Mrs. Fish that she had any other blood relations than her said granddaughter, nor have we any testimony as to who said blood relations were, so that the will, if any, did not change the title of the property from Jesse Furman, through whom complainants claim.

Appellants seek to show that the title did not pass from the infant, William Gabriel Furman, to his father Charles M. Furman, but to relatives of his mother. We have shown, *supra*, that the law of descents enacted in 1822 and re-enacted in 1829, which provides section 2, that if there be no children, then the father is the next to inherit. This is omitted by appellants' counsel in his brief in which, however, he copies Section 11, whereby it is provided that on the death of an infant owning land derived from his mother, having at the time certain relatives living on the part of the mother, the property should go to them instead of the father.

The inheritance of the father from the son as provided by Section 2, can only be defeated by the existence of such facts at the time of the death of the infant as being the case within Section 11, and defendants to avail

themselves of such facts and thereby defeat the alleged inheritance of the father, must affirmatively allege them in his answer as well as prove them. Yet he has failed to do either. The bill alleges the inheritance of Chas. M. Furman from his son. This is not denied by the answer. Answering such allegation defendants say "That they are not advised of the line of descent set out in the bill * * * but leave complainants to make such proof of the descent of their common ancestor, Joseph Fish, as they may be advised."

A defendant ought to apprise the plaintiff of the nature of the case he intends to set up, and then too, in a clear, unambiguous manner, and in strictness he cannot avail himself of any matter of defense not stated in his answer, even though it should appear in his evidence.

1st Daniel Ch., 712.

Burnham vs. Dalling, 18 N. J. Eq., 132.

Not only have the defendants failed to make such allegation in their bill, as to avail themselves of the point that Charles M. Furman did not inherit, but there is no testimony to show that, at the time of the death of the infant, 1836, there was any relation living on the side of the mother who would defeat the father's inheritance. The aunt, Mrs. Sanchez, who was the half sister of Mrs. Furman, is not shown to have been living at the time, or that she was the mother of Wm. J. Sanchez, as claimed, nor is it shown that the Grand Father, William Gabriel Perpall, was then living, or that he was the Gabriel W. Perpall, who signed the contract with Lieutenant Tattle, three years before the death of the infant.

Possibilities or conjectures should not be indulged in to controvert the testimony showing the inheritance of Charles M. Furman, especially in the absense of a

sufficiently affirmative allegation in the answer to support the same.

"In the consideration of a fact which is peculiarly susceptible of proof, the Court will not be influenced by mere circumstances to adopt a conjectural conclusion, in regard to its existence." Ormand vs. Barnard, 5 Florida, 528.

We would, again, in this connection, invoke the authorities cited above as to the conclusiveness of the findings of facts, of the master, sustained by the Court as to the inheritance.

An attempt was made by the deposition of one, Mary E. English, an aged mulatto woman, living in Key West, Florida, pp. 367 to 372. to show that Jesse Fish was married and left children as his heirs. But as appellant's counselmakes no such contention in his brief, nor did he in the argument in the court below, we may treat the claim as abandoned. Suffice to say, there is no evidence of the marriage between Fish and the Negro woman Clarissa, the mother of said deponent. On the contrary, it appears by the records of the Roman Catholic Church at St. Augustine and translation thereof, Exhibits "N" "O" "P" "Q" "R" "S" "T", pp. 261 to 265, as proved by Michael Molier, pp. 211-212, also testimony of John Masters, A. D. Rogero and Venancio Sanchez, pp. 209, 210, 211, that the woman Clarissa was a slave and her issue by Fish illigitimate. They never appear to have been in possession of, or made any claim to the property.

The defendants do not claim under the Fish title, so that a diversion of the inheritance in no manner strengthens their title.

Charles M. Furman was in possession for many years, he put Sanchez in charge of the property forty-five years prior to the institution of this suit. Such posses-

sion continued and still continues under claim of title which is sufficient to maintain the bill.

Ricard vs. Williams, 7 Wheat, 59 (5-398)

Sharon vs. Tucker, 144 U. S. 533 (36-532)

U. S. vs. Chaves, 152 U. S., 452 (40-215)

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA MAY BE SUED.

It is a late day to contend, as do appellants, that the Board of Trustees of the Internal Improvement Fund of the State of Florida, cannot be sued because the State's interest is involved.

The Board is composed of officers of the State, and all their rights, powers and duties are as representatives of the State's interests. Yet, from almost the time of the creation of the Board courts have entertained jurisdiction of suits against them. Trustees I. I. Fund vs. Bailey, 10 Fla. 112. Same vs. St. Johns Railway Co., 16 Fla. 531. Same vs. Gleason, 15 Fla. 384. Same vs. Lewis, 34 Fla. 424. Adams vs. Trustees I. I. Fund, 37 Fla. 246. Trustees I I. Fund vs. Greenough, 15 Otto 527.

The exemption from suit of a state is limited to those suits in which the State is a party to the record by name, and does not apply when an officer of the State is sued even though the State's interest is involved. Osborn vs. U.S. Bank, 9 Wheat. 738. Grisar vs. McDonnell, 6 Wall. 363. Davis vs. Gray, 16 Wall. 204, U. S. vs. Lee, 106 U. S. 196, (27–171).

If there were merit in the point raised, it comes too late. No such objection was made when the suit was instituted. The trustees, as to this point, submitted to the jurisdiction of the Court.

The immunity from suit belonging to a State which

is protected by the constitution is a personal
which it may waive at pleasure so that in a suit
well brought in which a State has sufficient in
become a party defendant, its appearance in a Co
United States is a voluntary submission to its jur

Clark vs. Barnard, 108 U. S. 436 (27–7

The Court below committed no error and t
should be affirmed.

FRANCIS P. FLEMING,
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FRANCIS P. FLEMING,
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Supreme Court of the United States.

No. 23.—October Term, 1900.

Henry L. Mitchell, Governor of the State of Florida, William D. Bloxham, Comptroller of the State of Florida, et al., Appellants, *vs.* Charles M Furman, in his own right, and as Administrator of Charles M. Furman, Deceased, et al.	Appeal from the Circuit Court of the United States for the Southern District of Florida.

[March 11, 1901.]

This was an amended bill of complaint filed November 30, 1895, in the Circuit Court of the United States for the Southern District of Florida by Charles M. Furman in his own right, and as administrator of the estate of Charles M. Furman; Bolivar B. Furman, and Alester G. Furman, all citizens of the State of South Carolina, against Henry L. Mitchell, Governor, William D. Bloxham, Comptroller, Charles B. Collins, Treasurer, William B. Lamar, Attorney General, and Lucius B. Wombwell, Commissioner of Agriculture, of the State of Florida, and citizens thereof, as the Board of Trustees of the Internal Improvement Fund of the State of Florida; the Florida Coast Line Canal and Transportation Company, a corporation of Florida, having its principal place of business at St. Augustine; the St. Johns Railway Company, a corporation of Florida, having its principal place of business at Jacksonville; Horace S. Cummings, residing in the District of Columbia; and John A. Henderson, a citizen of the State of Florida, alleging: "That they own and hold title in fee simple, as tenants in common, to all that tract, parcel, or piece of land lying, situate, and being in the county of St. Johns in the State of Florida, and within townships seven, eight, and nine south of range thirty east, known as 'Anastasia,' or 'Saint Anastasia,' Island, said to contain ten thousand acres, but which in fact contains about seven thousand five hundred acres, excepting therefrom what was known at the time of the Spanish grant hereinafter mentioned as the King's Quarries, the boundaries of which were marked by stakes, the same being about two hundred acres, lying on and east of the old King's Road, between the same and the old lighthouse, which exception does not embrace the lands or any part thereof hereinafter alleged to be claimed by the defendants or any of them."

"That the said tract of land was granted by the government of Spain to José, or Joseph, Fish—otherwise known as Jesse Fish—(hereinafter

designated as Joseph Fish), on or about the 19th day of June, A. D. 1795, which said grant was ratified and confirmed by the United States by the treaty with Spain ratified by the United States on the 19th day of February, A. D. 1821."

The bill then set up title to Anastasia Island as derived from Joseph Fish, through his mother Sarah Fish, her granddaughter, Jessie B. Perpall, who married Charles M. Furman, who became sole heir at law of his wife and their son, Gabriel, and left a will under which complainants claimed. It was averred that Joseph Fish died intestate in 1798; that his mother died intestate in 1825; that her granddaughter died intestate in 1827; that Mrs. Furman's son Gabriel died in infancy in 1836; and that Charles M. Furman died in 1872.

It was further alleged that Joseph Fish was placed in possession of the said land so granted and resided thereon in his dwelling house and cultivated an orange grove and fields, enclosed by a fence; that he used the woodlands on the island, and exercised such acts of possession of the whole of the island as it was capable of; and that from his death to the present time those claiming under Fish have done the same.

The bill averred that the State of Florida claimed title under the act of Congress of September 28, 1850, relating to swamp lands, of certain lands on Anastasia Island, which complainants asserted were part of the grant to Joseph Fish, and owned by them; these were described according to the public surveys and alleged to contain 1,465.15 acres, more or less, all in township seven, south of range 30 east; and that the United States on September 18, 1856, issued its patent to the State of Florida therefor.

That the State of Florida by an act of June 6, 1855, vested in the governor, the comptroller, the State treasurer, the attorney general, and the register of public lands, now known as the Commissioner of Agriculture, of that State, and their successors in office, as the board of trustees of the internal improvement fund of the State, the title to all lands granted to the State under the act of Congress, with power to sell and transfer the same; that defendants, Mitchell, governor, and others, now constitute the board of trustees; that the board on May 13, 1885, executed a deed of conveyance to the Florida Coast Line and Transportation Company of certain lots and parts of sections, in township seven, containing in all 549 acres, being part of the lands patented to the State, which land, except that conveyed to Horace S. Cummings, was claimed by the Transportation Company adversely to complainants; that of these lands, the Transportation Company executed a deed of conveyance to Cummings of one hundred and sixty acres, which was claimed by Cummings adversely to complainants.

That the board of trustees, September 21, 1886, executed a conveyance to the St. Johns Railway Company of certain lots and parts of sections in

township seven, containing in all 328.10 acres, being part of the land patented to the State, which land was claimed by the railway company adversely to complainants; that the board of trustees on July 30, 1892, executed a deed of conveyance to defendant Henderson of certain lots in township seven, containing 286.28 acres, which land was claimed by Henderson adversely to complainants. It was further averred that the United States issued to the State of Florida on June 27, 1895, a patent for certain other lands, being part of Anastasia Island, described by the public surveys, in township seven, containing 393.30 acres; that the United States issued to the State of Florida on April 8, 1895, a patent for certain other lands described by the public surveys, in township seven, containing 120 acres; that these lands were selections made by the State under an act of Congress of June 9, 1880, entitled "An act to confirm certain entries and to warrant locations in the former Palatka Military Reservation in Florida;" that in addition to the lands so patented the State had selected under said act certain lands on Anastasia Island in township seven containing 367.32 acres; that entries of these selections had been allowed by the Commissioner of the General Land Office of the United States, and the same were held to be patented to the State under the act of Congress of June 9, 1880; that the lands so patented to the State and those selected by the State for patent under the act aforesaid were in lieu of selections under the act of Congress of September 28, 1850, and were vested by the legislature of Florida, by the act of January 6, 1855, in said board of trustees, if the United States held the title thereto at the time of the issue of the patents, and that the board of trustees claimed title to the same adversely to complainants.

The bill charged "that the said patents from the United States and the said deeds of those claiming thereunder, and said entries and selections of the State of Florida, whereby the said defendants claim title, respectively, to the said lands as aforesaid are invalid, and do not vest a title in the said defendants to the lands so claimed by them, respectively, as aforesaid, for the reason that the United States, under whom the defendants claim, did not, at the time of issuance of such patents or at any other time, have or hold title to the said lands, or any part thereof, but that the title to the same is in your orators, holding and claiming under the said grant of the government of Spain to the said Joseph Fish as aforesaid."

The bill also alleged that none of the defendants were in actual possession of the lands or any part thereof; that the lands exceeded in value the sum of $2,000; and "that this cause arises under the said treaty between the United States and Spain, which ratified and confirmed the said grant to the said Joseph Fish, under whom your orators claim title. And the controversy involved in this case necessarily involves the construction of said treaty."

It was then charged "that the said patents, entries, and deeds by and under which the defendants respectively claim title to said lands as aforesaid, are clouds upon the title of your orators in the said lands and tend to depreciate the value and sale thereof, to the great damage and injury of your orators in the premises."

The prayer was "that the said patents, entries, and deeds by and under which the said defendants respectively claimed title to the lands so respectively claimed by them as aforesaid may be set aside and declared void as clouds upon the title of your orators, and that the defendants and each of them may be enjoined from entering upon or taking possession of said lands, or in any manner disturbing the possession of your orators thereof, and that your orators may have such other and further relief in the premises as equity may require and as to your honors shall seem meet."

The defendants Mitchell and others, members of the board of trustees, moved to dismiss the bill for want of jurisdiction, which motion was overruled. Defendant Cummings made a similar motion. The trustees also filed a demurrer for want of jurisdiction, and a demurrer for want of equity. The defendants, the Canal and Transportation Company and the St. Johns Railway Company, also demurred. All the demurrers were overruled.

The trustees and Cummings then filed their answer, denying that Anastasia Island was granted by the government of Spain to José or Joseph Fish, June 19, 1795, or at any other time, or that the title to the lands in controversy was ever granted by the King of Spain or by his lawful authorities, and averring that the only part of Anastasia Island, the title to which was ever granted by the King of Spain or by his lawful authorities, was a tract of about three hundred acres granted to Lorenzo Rodriguez in 1793, and a tract of about twenty acres granted to F. X. Sanchez in 1802, both of which tracts had been confirmed by the United States and surveyed and platted as private grants upon the maps and plats of the Land Department of the United States. They denied that the treaty with Spain ratified or confirmed any grant of the lands in controversy in this suit to the ancestor of complainants or gave title thereto to any other person save only to the United States; and denied that Joseph Fish was placed in possession of Anastasia Island except the King's Quarries, as a grant thereof to him by the King of Spain or his lawful authorities, or that he or his successors exercised such acts of possession of the whole of Anastasia Island except the King's Quarries, as it was capable of, under claim of title, or that he claimed title as the owner of said island. But they said that the occupancy and acts of possession alleged, if true, applied to no other lands than those embraced in the Fish homestead, which was a point of land on the extreme west shore of Anastasia Island, nearly surrounded by water, and cut off from the main island of Anastasia, embracing about one hundred acres of land, well known by general reputa-

tion as "Fish's Island." They admitted the patenting by the United States to the State of Florida of the several tracts of land described in said bill, and averred that before any patent could be issued for these lands, the State of Florida was required to establish before the Land Department of the United States that the lands were vacant and unappropriated public lands of the United States; that Furman in behalf of complainants appeared before that tribunal and contested the matter, and presented and urged their claim to the same under the same title set up in the bill, and that there was a final determination by said tribunal which was adverse to complainants' claim, and decided that the lands were not private lands.

Also that in addition to the lands so patented to the State of Florida, the State had selected the lands set out in the bill, and that the entries had been allowed by the land office, and were held to be patented; and said that such allowance and holding for patent was an adjudication of a competent tribunal that the lands were public lands of the United States, which adjudication for the issue of the patent was subject to review in the Land Department, and might be corrected if erroneous. They denied that the patents, deeds, entries and selections whereby defendants claim title to the lands in controversy were invalid, and asserted that the United States had title to said lands, and that it was not in complainants.

"They admit that this controversy involves the construction of the treaty between Spain and the United States, and they aver that complainants in their said bill have set out as their title an incipient and inchoate title under the 'Government of Spain,' not cognizable in the courts of the government until recognized or confirmed by the Congress of the United States; that by the rules established in the Territory of Florida by the authority of the King of Spain for the granting of lands, a grant from the government of Spain signified only the first concession or right of occupancy of the royal domain; that perfect or complete grants were recognized by the treaty with Spain, but incomplete grants were ratified by the treaty, to the same extent they would have been valid had the territory remained under the King of Spain; that if there had been a complete grant of Anastasia Island at the date of the treaty the owners thereof were authorized under the laws of the United States to have the same surveyed without expenses as a private claim by the United States, but by the averments of their said bill complainants show that said lands have been surveyed as public lands."

The answer stated "that Anastasia Island is a barrier of the sea, consisting chiefly of high sand hills blown in from the sea beach, covered with 'scrub,' a low growth of hard wood; that through the center of the northern part, in township 7, there runs north and south a ledge of coquina rock from one-half to three-quarters of a mile wide; that all the lands are barren and wholly unfit for any purpose whatever save seashore residence, and of no value apart from their proximity to a city patronized as a

winter resort; that on the western shore of said island, nearly separated from the main island by a strip of low ground or 'swale,' is a neck of land called Fish's Island, containing about 60 to 100 acres, which is arable land, and on this point was an orange grove and cultivated fields of about thirty acres under enclosure, and houses and outbuildings."

It was further averred that complainants or their ancestor never had any title whatever to the lands described in the bill unless it were to a part of lots two, three and six of section 29, township 7, range 30 east, which embraced the orange grove of "Vergel" plantation, alleged to have been sold by the Spanish government in probate proceedings upon the estate of Joseph Fish about March 21, 1792; that to this plantation the heirs of Fish might have had an equitable title, but this had been forfeited by failure to present or record such claim and have it surveyed.

Defendants further said that Anastasia Island was officially turned over in behalf of the King of Spain to the United States, in 1821, as one of the adjacent islands named in the treaty, and as a part of the royal domain, and the lands delivered as such by the lawful authorities of the King of Spain to the United States, whose authorities then went into actual occupancy of part, and the possession of the whole, of Anastasia Island, save two Spanish grants, one to Rodriguez and the other to F. X. Sanchez.

That June 19, 1795, the Spanish law in force in the Floridas vesting in the Spanish governors the power to make grants of lands was the royal order of 1790, under which Governor Quesada, Spanish governor of East Florida in 1795, required ten years of continued and uninterrupted possession before full title was granted to claimants, who upon petition had received a grant or concession and had been put in possession of lands, &c., &c.

The answer further set forth that no person except the governor of the province was entitled to make grants of land under the Spanish law, and if any other person had authority to make grants the titles so granted were incipient until confirmed by the governor, &c.; and alleged on information and belief that any proceedings purporting to be a concession for 10,000 acres, dated June 19, 1795, to Joseph Fish, found among the archives at the date of the cession, were either forgeries, or so irregular as to render their genuineness too doubtful to be accepted as evidence.

Defendants averred that any claim which Fish ever had would be found to be an alleged grant purporting to be signed by one Morales, the commandant of the third battalion of Cuba, and not by the governor, an unauthorized proceeding under Spanish law; that no authority existed in Morales to make the grant, and no other claim in East Florida is based on action by him; that the law required an official survey to be filed in the records and a certified copy delivered to claimants, but there was none in this instance; that the archives relating to property in Florida, both public and private, contain a complete list of all real titles

or patents for lands granted by the lawful authorities of the King of Spain in East Florida, but that list contains none to Joseph Fish for the lands on Anastasia Island.

The answer restated that the lands claimed by complainants to have been granted to Joseph Fish were never segregated from the royal domain, and were not measured, bounded or platted or otherwise located by official survey, and could not be identified by natural boundaries.

Defendants further averred that by the act of Congress of May 23, 1828, Congress confirmed all claims recommended for confirmation to the extent of a league square, and enacted that no more than a league square should be confirmed in any grant, and that no confirmation should be effectual until a full release by the claimant of all the lands claimed in any one grant in excess of a league square, but authorizing all claimants who were not willing to accept a league square to present their titles to the District Court of the United States within one year from the date of the act or be barred; that claimants never released the excess of a league square, nor presented their claim to the District Court of the United States, as did all others having claims in Florida in excess of that amount; that the legislative council of the Territory of Florida published the acts of May 23, 1828, May 26, 1830, and February 8, 1827, with the treaty with Spain, for circulation in Florida, and though often notified of the limitations in said acts, the claimants under Joseph Fish did not avail themselves of the acts, and abandoned and forfeited their claims to said land, so that the United States would have acquired title by prescription even if the lands were private property; that in 1833, having given public notice that unless the private claims within the district were presented to the surveyor general, he would survey the same as public land of the United States, the claim of Fish not having been presented and having been abandoned, the United States extended the surveys over all of Anastasia Island except the grants to Rodriguez and Sanchez, and in 1839 advertised the lands for sale as public lands; that on May 6, 1851, the maps and plats of said lands surveyed as public lands were formally approved by the surveyor general for Florida; that the United States patented to the State of Florida certain lands in 1866 as vacant lands, and in 1867, 1868 and 1869 a large area of lands on Anastasia Island were entered under the homestead laws of the United States, and settled upon and improved, and wood was cut therefrom and sold; that some of the homestead settlers failed to make final proof of their entries, but final proof of homestead and settlement under the homestead laws for lands on the island was made and final certificates issued to several persons named in 1875, in 1876 and in 1882; that in 1867 the trustees executed a conveyance for lands on that island to Rogero for lots 2 and 3, section 29, to Hopkins and Rogero for lot 6, section 29, and to Magruder and Logan for lots 2 and 3, section 32, all in township 7, range 30 east, being part of the lands

patented to Florida; that September 16, 1868, Sanchez applied to the Land Department of the United States for the issue of a patent upon the Fish claim, and in 1870 Furman advised the Land Department that he claimed to be the owner of Anastasia Island under an alleged grant prior to 1763, and made application for the issue of a patent from the United States to him.

That from 1831 to June 22, 1860, the claim was wholly barred; that June 22, 1860, Congress again authorized claimants to present their claims, if an imperfect grant, to commissioners for confirmation, but if a complete grant, to the District Court for the Northern District of Florida, but those claiming under Fish neglected to avail themselves of this right to have the validity of their claim determined, but did apply to the Land Department for further adjudication; that after application to the Land Department for an adjudication by Furman in 1870, Congress extended the act of June 22, 1860, until June 10, 1875, by an act approved June 10, 1872, by the second section of which act no proof of title was required of claimants, provided they and those from whom they claimed had held continuous possession of the lands claimed; that having submitted their claim to a tribunal of their own choice they are now estopped to deny its jurisdiction.

That in June and July, 1888, the State of Florida applied to the land office at Gainesville to enter certain portions of land at the north end of Anastasia Island under the act of June 8, 1880, as vacant and public land, but because there was on file at the land office a letter from the Commissioner dated March 7, 1887, advising that the island was claimed by Furman, and that the claim had not been adjudicated by the Land Department, the register and receiver rejected the selections of Florida, and the State appealed to the Commissioner; that the claim of Furman was taken under advisement by the Commissioner on briefs submitted by the State, and by Furman and others claiming under Fish, and on August 2, 1890, the Commissioner rendered his decision that the lands were public lands of the United States, whereupon complainants took an appeal from the decision of the Commissioner to the Secretary of the Interior, and submitted arguments in support of their contention that the said lands were owned by them under a valid Spanish grant, and on June 22, 1893, the Secretary rendered his decision affirming the decision of the Commissioner, that said claim had no validity; that complainants failed to file any motion for review and the decision became final, and is a complete and final adjudication of complainants' want of title, and that the lands were public lands subject to disposal by the United States; that complainants caused a bill to be introduced in the Fifty-third Congress for confirmation and release to them by the United States of the lands on Anastasia Island as claimed under Fish, but Congress refused to consider the same.

The answer denied that complainants were in possession of any part of the land on Anastasia Island, and set forth the possession of many persons claiming title under the United States. It averred that the St. Augustine and South Beach Railroad Company was in possession of a roadbed and right of way across the island through sections 17, 21, 27 and 28 in township 7, range 30 east, under authority of an act of Congress approved March 3, 1875, granting a right of way over the public lands of the United States; that lot one of section 21 was reserved for lighthouse purposes by order of the President dated June 22, 1869; that part of lot two of section 21 of township 7 was declared a reservation for lighthouse purposes by order of the President dated February 1, 1883; that afterwards by a like order the remainder of said lot two was declared a United States reservation for lighthouse purposes; and that by executive order dated May 4, 1893, the President reserved 700 acres of land in sections 21, 22 and 28 of township 7 for military purposes.

That the requirement by Congress that all claimants under grants from the King of Spain in the Floridas should relinquish all in excess of a league square of the lands claimed in any one grant, was a declaration of the policy of the political department of the United States as to the territory acquired from a foreign power and a determination by Congress of the extent of the obligations imposed on the United States by the treaty with Spain.

The answer further averred that the failure to release the excess forfeited the entire claim, and that, without any release, the excess over a league square was subject to sale as public land; that the issue of the patents depended upon the existence of facts which the Land Department of the United States had determined existed; that by the survey of the lands of Anastasia Island as public lands and their offer for sale by the proclamation of the President, and confirmation of portions thereof to the State of Florida by patent, the reservation of portions thereof by executive order, and the opening of all to homestead entry, the United States had become seized of the whole of said Anastasia Island by the equivalent of office found.

The St. Johns Railway Company and the Florida Canal and Transportation Company also filed an answer of similar purport. Numerous exceptions to these answers were filed and some of them were sustained to certain paragraphs. Replication having been filed, the cause was referred to a master, who subsequently made a report containing findings of facts, findings of mixed law and fact, and conclusions of law, to which numerous exceptions were filed by defendants, all of which were overruled by the court, and a decree was entered in accordance with the prayer of the bill and the recommendations of the report. A decree *pro confesso* was entered against John A. Henderson.

From this decree all the defendants except Henderson, in respect of whom an order of severance was entered, prosecuted this appeal.

The master also filed with his report an elaborate and careful opinion on the whole case.

Complainants introduced in evidence from the American State Papers, Public Lands, vol. IV, Duff Green Edition, 256, "Minutes of the proceedings of the commissioners appointed to ascertain claims and titles to land in East Florida for the year 1824."

Meeting of the board, March 29, 1824, pursuant to an act of Congress of February 19, 1824.

Meeting, September 13, 1824, when "Sarah Fish, 10,000 acres; same 500 acres," and three other "cases being called and not being prepared for trial," were "placed at the foot of the docket."

Minutes of meeting, March 28, 1825, pursuant to the act of Congress of March 3, 1825. April 21, 1825: "Permission was given by the board to the executors of the estate of Sarah Fish, deceased, to amend the memorials in the claims of said Sarah Fish."

December 16, 1825: "The following claims were this day reported to Congress for confirmation, viz. . . . . Sarah Fish's heirs, for ten thousand acres; . . ."

Report of Commissioners to the Secretary of the Treasury, January 31, 1826, transmitting claims and titles examined and disposed of, class three comprehending "claims exceeding 3,500 acres, the titles to which were found among the public archives of the country, and are ascertained by the commissioners to be valid Spanish grants, and reported accordingly to Congress for confirmation." 4 Am. State Papers, Public Lands, D. G. ed., p. 276. The Fish claim was included in class No. three, as follows:

"*Register of claims to land exceeding 3,500 acres in East Florida, which are founded on patents or royal titles derived from the Spanish Government, and which in the opinion of the commissioners are valid.*

Number.	Names of—		Date of the patent or royal title.	Date of the concession or order of survey.	Quantity of land.	By whom conceded.	Authority or royal order under which the concession was granted.	Conditions.	Date of survey.	By whom surveyed.	Where situated.	Occupation and cultivation.	
	Present claimants.	Original claimants.			Acs., hdths.							From.	To.
*	* *	* *	*	*	*	*	*	*	*		* *	*	*
				Cases reported this session.									
21	Heirs of Jessie Fish.	Jessie Fish.	.....	19 June, 1795.	10,000	Morales.	1790	Complied with.	.....	.....	Anastasia Island.		
*	* *	* *	*	*	*	*	*	*	*	*	* *	*	*

The petition of Mrs. Fish, dated August 31, 1823, asserted that she "claims title to the island lying in front [*i. e.*, to the east] of the city of St. Augustine, and running south about eighteen miles, more or less, along the east bank of the river Matanzas, known by the name of the island of St. Anastasia, supposed to contain ten thousand acres, as belonging to the deceased husband, Jesse Fish, Senior, in the year 1763. That in the year 1792 this island was sold at public sale by order of the Spanish governor, Quesada, when her son, the late Jesse Fish, Jr., deceased, became the purchaser."

Accompanying this memorial were certain papers and proceedings as follows: A petition of José Fish, (erroneously dated December 2, 1796,) stating that at the auction of his father's property for the payment of his creditors, he purchased the place called The Vergel for $1,605, which sum he gave only with a view to the fruit trees of said place, and the timber which is on the land belonging to it, as the land is entirely useless for planting; that several of the neighbors had been cutting the wood, and therefore he begs to be declared owner of the lands which his said father possessed, annexed to the place of the Orange Grove, which, according to the deeds granted in the time of the British possession, amounted to 10,000 acres, whether as a new settler or by the right which his deceased father had to them. That if he does not obtain this favor he will consider himself the loser of the greatest part of his purchase, because the lands will not produce crops of any kind and a great number of the fruit trees have dried up, which is likely to occur to the balance of them.

Governor Quesada, who described himself as "brigadier of the infantry of the royal armies, governor, commander in chief, vice royal patron, and sub-delegate of the royal domain of this city of St. Augustine, Florida, and its province, for His Majesty," referred the petition December 15, 1794, to the assessor general, who, on the same day, reported that if Fish had asked to prevent trespassing or to recover possession, he would render an opinion, but as Fish asked to be declared owner, it was for the governor to determine judicially the extent of Fish's purchase or his right as a new settler.

Thereupon Governor Quesada directed Fish to make proof of the facts on which he based his right or claim to favor.

Sundry depositions were then taken, and the governor on the 12th of February, 1795, referred the petition and proof to the collector of the exchequer, that as fiscal of it he may represent him in the discharge of his functions. February 27 the fiscal reported that at the sale of the orange grove to Joseph Fish, the boundaries of the land were not taken into consideration, and only the valuation of the trees within the orchard was made, without including the 10,000 acres of land annexed to it. And he was of opinion that Fish was not entitled to anything more than he could prove by the inventory, valuation and sale, and that after this land had

been laid off, the remainder ought to be sold as belonging to his deceased father and for the benefit of the creditors of his estate; that the inventory, valuation and sale of the orchard should be annexed; and that in case Fish had occasion for the use of more public land, and without injury to a third person, the fiscal minister did not find any objection to granting them to him as a new settler, "according to what His Majesty has commanded of this particular."

The governor then directed, March 6, 1795, that the testimony indicated "be placed in continuation and with it those proceedings returned to the assessor general, that he may consult with me as to what is proper as respects the other points to which the foregoing fiscal representation refers."

The inventory, valuation, and sale of the orange grove in 1792, was accompanied by the commission of the governor dated January 18, 1792, appointing the appraisers, and specifying the "9th item" thus: "The place called 'El Vergel,' which belongs to the deceased, although the title under which he enjoyed it does not appear in the proceedings."

March 26, 1795, this entry was made by the governor: "Seen: Passed over to Don José Fish: Thus decrees and orders Senor Don Juan Nepomuceno de Quesada, brigadier of the infantry of the royal armies, governor, Commander General, Vice Royal Patron, and Subdelegate of the Royal Domain of this City of St. Augustine, Florida, and its province, for His Majesty, who signs it, with the opinion of Senor the assessor general, the twenty-sixth of March, one thousand seven hundred and ninety-five."

There then appears a new petition by Fish, without date, setting out that he is a new settler in the province; that the above mentioned documents have been given him, and he, being advised of their contents as also of the sale at auction of The Vergel, considers that the fiscal was in error when he reported adversely on the first petition; that he has produced proof that his father had ancient possession of "El Vergel," for which he paid an excessive price, and prays that a grant of "said island" be made to him, and that a copy of the writing which he presented to the notary after the sale, asking for the island at a valuation, be placed in continuation.

On April 17, 1795, the assessor general, Ortega, who recites that he is "advocate of the royal council, lieutenant governor, auditor of war, and assessor general of the city of Saint Augustine, Florida, and its province, for His Majesty, who signs it in consequence of the illness of the governor and commander-in-chief," directed that the copy be put in continuation, and the whole passed over to the representation fiscal. The writing referred to is dated March 22, 1792, and Fish states therein that at the public sale, the day before, of the property of his father, there was no person who would bid "for the island del Vergel;" that he obligated himself to pay $1,605; and "he prays your excellency to have the kindness to order that he be placed in possession of it." On May 4, 1795, the first officer of the chief

comptroller's department, "and who is charged with the administration and court of justice of the royal treasury on account of the illness of his excellency, the governor, and as attorney fiscal of the royal treasury," reviewed the papers, and concluded that under the circumstances the governor might "order the boundaries of the Vergel to be marked off to the number of 10,000 acres." This was followed by this entry: "Having examined the proceedings, it was thus decreed and ordered by Senor Don Bartolome Morales, colonel of the infantry of the royal armies, commandant of the third battalion of Cuba which garrisons this city of Saint Augustine, Florida, and political and military governor of it and its province, from the indisposition of the governor, who signed it on the sixteenth of May, 1795; which I attest." This was signed by Morales, and attested by Ortega, assessor general, before the notary.

June 12, 1795, Morales and Ortega directed notice to be given to the defender of the estate of Fish, and that the proceedings be returned.

June 17, 1795, the defender of the estate reported that the 10,000 acres might be granted.

Then follow the alleged grant and delivery of possession, namely:

"Having examined those proceedings and seen the proof adduced in them by Don José Fish, it appears not only his father of the same name possessed since the time of the old Spaniards and in that of the British dominion the 10,000 acres of land, possession of which he claims at the place called the Orange Grove, which he purchased at public auction, but also that he made a bid for the said land, under which his purchase ought to be understood, which defect in not explaining it thus at that time should not be prejudicial to him, and has given cause to this litigation. His excellency said that declaring it, as he declared now, he ordered in consequence that whether by the right which the burdensome acquisition of the said land gives Fish, which cost him 1,605 dollars, which it appears he paid for the purchase of the Orange Grove, or by the right which the ancient possession of his father gives him to the said 10,000 acres of land, or finally in consequence of the petition of Fish, that they should be granted to him as a new settler, he be placed in possession of the said land, which it appears his said father possessed, and is already laid off, with the reserve of the quarries, and the remainder, which was not granted to his said father, and which the King has reserved, renewing, in case of necessity, at the cost of the interested, the boundaries by said appraisers, Don Manuel Solana, who at the time of the old Spaniards and at the new possession by them of the province laid off by order of the government, the aforesaid quarries, to give possession, as is proven, to the father of the memoralist of the land which he claims, and let them be granted to him on the terms above set forth, the present notary, who is commissioned for the purpose, when with the said appraisers, and any other workman that may be necessary, he shall assist at marking the boundary, at which also shall assist, to represent the royal treasury, the person whom the minister of the royal domain may depute for the purpose. All of which shall be made appear on the proceedings with which, and the taxation of the costs, which the interested shall satisfy, this proceeding shall be held as concluded. It was

thus decreed and ordered by Senor Don Bartolome Morales, colonel of infantry of the royal armies, commandant of the third battalion of Cuba, which garrisons this city of St. Augustine, Florida, and political and military governor, who signed this, with the opinion of his honor the assessor general, on the 19th June, 1795, which I attest.

BARTOLOME MORALES.
LICENTIATE JOSEF DE ORTEGA."

"*Proof of boundary and possession.*

"Being at the plantation called the Orange Grove, in the island of St. Anastasia, on the tenth of July, 1795, in conformity with what is provided in the foregoing decree, we proceeded to the marking the boundaries of the land comprised in these proceedings. Don Manuel Solano, the appraiser appointed for the purpose, passing from said place to where the quarries of the King and of individuals are situated, who, passing along the ancient boundaries with Don José Lorente, chief master of the royal works, who accompanied him to inform himself, Don Tadeo Arribas, officer of the royal comptroller's office, from the employment of the collector, for his fiscal cognizance, and I, the present notary, went fixing up stakes to point out said boundaries across the island, and separated the said quarries, saying that all besides them was what corresponded to Don José Fish; to whom, being also present, I, the said notary, in discharge of the commission which was conferred upon me, put him in possession of the land pointed out, leading him into it by hand, and riding together on horseback by various places, until arriving at the dwelling house; all of which I did as a token of said possession, which he took quietly, peaceably, and without contradiction. In testimony of which and for the due proof I have extended the present proceedings, which all signed with the exception of Solano, who said he did not know how."

Signed by Arribas, Lorente and Fish.

The Secretary of the Treasury transmitted the report of the commissioners, with the evidence and decisions, to Congress, February 21, 1826. Vol. 4, p. 400.

The act of Congress of May 8, 1822, (3 Stat. 709, c. 129,) provided that "for the purpose of ascertaining the claims and titles to lands within the territory of Florida, as required by the treaty," commissioners should be appointed with power "to inquire into the justice and validity of the claims filed with them," but not to have "power to confirm any claim or part thereof where the amount claimed is undefined in quantity, or shall exceed one thousand acres; but in all such cases shall report the testimony with their opinions to the Secretary of the Treasury, to be laid before Congress for their determination." A surveyor was also to be appointed.

Section 4 provided that "every person, or the heirs or representatives of such persons, claiming title to lands under any patent, grant, concession, or order of survey, dated previous to the twenty-fourth day of January, one thousand eight hundred and eighteen, which were valid under the Spanish government, or by the law of nations, and which are not rejected

by the treaty ceding the territory of East and West Florida to the United States, shall file, before the commissioners, his, her, or their, claims, setting forth, particularly, its situation and boundaries, if to be ascertained, with the deraignment of title, where they are not the grantees, or original claimants; which shall be recorded by the secretary, . . . and said commissioners shall proceed to examine and determine on the validity of said patents, grants, concessions, and orders of survey, agreeably to the laws and ordinances heretofore existing of the government making the grants, respectively, having due regard, in all Spanish claims, to the conditions and stipulations contained in the eighth article of a treaty concluded at Washington, between His Catholic Majesty and the United States, on the twenty-second of February, one thousand eight hundred and nineteen; that any claim not filed previous to the thirty-first day of May, one thousand eight hundred and twenty-three, shall be deemed and held to be void and of none effect."

This act was amended by an act approved March 3, 1823, (3 Stat. 754, c. 29,) confining the existing board of commissioners to West Florida, and authorizing the appointment of three commissioners for East Florida. The second section of this act provided that in the examination of titles, the claimant or claimants "shall not be required to produce in evidence the deraignment of title from the original grantee or patentee, but the commissioners shall confirm every claim in favor of actual settlers at the time of cession of the said territory to the United States, where the quantity claimed does not exceed thirty-five hundred acres, where such deraignment cannot be obtained, the validity of which has been recognized by the Spanish government, and where the claimant or claimants shall produce satisfactory evidence of his, her, or their, right to the land claimed. And said commissioners shall have the power, any law to the contrary notwithstanding, of deciding on the validity of all claims derived from the Spanish government in favor of actual settlers, where the quantity claimed does not exceed three thousand five hundred acres."

It was enacted by the fifth section "that all claims not filed with the commissioners of the district, where the land claimed is situated, in the manner prescribed by the act to which this is an amendment, on or before the first day of December next, shall be held to be void and of none effect."

The act further provided for the appointment of a surveyor for the territory, for the opening of land offices in each district, and for the appointment of a register and a receiver for each of said offices.

February 28, 1824, an act was passed, (4 Stat. 6, c. 25,) which extended the time limited for the settlement of private land claims in Florida by the act of March 3, 1823, until January first, 1825; declared that no person should be taken and deemed to be an actual settler unless he, or those under whom he claimed title, should have been in the cultivation or occu-

pation of the land at and before the period of the cession; and that it should be lawful for claims to be filed any time previous to September 1, 1824, "but all and every claim not filed by that time, shall be held and deemed void and of none effect."

On the third of March, 1825, another act was passed, 4 Stat. 125. c. 83, which provided that it should "be lawful for claims to be filed before the board of commissioners in East Florida any time prior to the first day of November, one thousand eight hundred and twenty-five;" and the commissioners were authorized to continue their session until the first Monday of January, 1826. The act provided for the appointment of keepers of the public archives.

February 8, 1827, an act was passed, (4 Stat. 202, c. 9,) to confirm title to lands and lots favorably passed on or reported not exceeding thirty-five hundred acres. This act provided "that the several claimants to land in said district, whose claims have not been heretofore decided on or filed, before the late board of commissioners, be permitted to file their claims, and the evidence in support of them, with the register and receiver of said district, and evidence in support of those filed before said board, at any time before the first of November next, whose duty it shall be to report the same, with their decision thereon, and those already filed, to the Secretary of the Treasury, on or before the first day of January, one thousand eight hundred and twenty-eight, to be laid before Congress at the next session." Surveys were to be made and certificates granted, and claims for which the surveyor refused to issue certificates designated on the township plats. Holders of claims exceeding 3,500 acres were required to furnish the surveyor with such information as would enable him to exhibit the claims on said plats.

This was followed by the act of May 23, 1828, (4 Stat. 284, c. 70,) which confirmed claims which had been recommended for confirmation "to the extent of the quantity contained in one league square, to be located by the claimants, or their agents, within the limits of such claims or surveys filed, as aforesaid;" "that no more than the quantity of acres contained in a league square, shall be confirmed within the bounds of any one grant; and no confirmation shall be effectual until all the parties in interest, under the original grant, shall file with the register and receiver of the district where the grant may be situated, a full and final release of all claim to the residue contained in the grant; and where there shall be any minors incapable of acting within said territory of Florida, a relinquishment by the legal guardian shall be sufficient; and thereafter the excess in said grants, respectively, shall be liable to be sold as other public lands of the United States."

The fourth section provided that the register and receiver should continue to decide the remaining claims in East Florida, subject to the same limitations and in conformity with the provisions of the several acts of

Congress for the adjustment of private land claims in Florida, until the first Monday in the next December, when they should make a final report of all the claims aforesaid in said district to the Secretary of the Treasury; and provided that it should never be lawful after that time for any of the claimants to exhibit any further evidence in support of said claims.

It was further enacted by section six "that all claims to land within the territory of Florida, embraced by the treaty between Spain and the United States of the twenty-second of February, one thousand eight hundred and nineteen, which shall not be decided and finally settled under the foregoing provisions of this act, containing a greater amount of land than the commissioners were authorized to decide, and above the amount confirmed by this act; and which have not been reported, as antedated or forged, by said commissioners, the register and receiver, acting as such, shall be received and adjudicated, by the judge of the superior court of the district in which the land lies, upon the petition of the claimant, according to the forms, rules, regulations, conditions, restrictions, and limitations prescribed to the district judge, and claimants in the State of Missouri, by act of Congress, approved May twenty six, eighteen hundred and twenty-four, entitled 'An act enabling the claimants to land within the limits of the State of Missouri, and territory of Arkansas, to institute proceedings to try the validity of their claims;' *Provided*, That nothing in this section shall be construed to authorize said judges to take cognizance of any claim annulled by the said treaty, or the decree ratifying the same by the King of Spain, nor any claim not presented to the commissioners or register and receiver, in conformity with the several acts of Congress, providing for the settlement of private land claims in Florida." An appeal was provided for from the decision of the judge of the District Court to this court within four months after the decision should be pronounced.

The twelfth section read: "That any claims to lands, tenements, or hereditaments, within the purview of this act, which shall not be brought by petition before said court within one year from the passage of this act, or which, after being brought before said court, shall on account of the neglect or delay of the claimant, not be prosecuted to a final decision within two years, shall be forever barred, both at law and in equity; and no other action at common law, or proceeding in equity, shall ever thereafter be sustained in any court whatever."

The act of May 26, 1824, 4 Stat. 52, c. 173, in respect of land claims in Missouri and Arkansas, which "might have been perfected into a complete title" under the prior government, provided that it might be lawful for claimants to lands in Missouri and Arkansas to institute proceedings to try the validity of their claims in the manner set forth; that the court should have full power and authority "to settle and determine the question of the validity of the title, according to the law of nations, the stipulations of

any treaty, and proceedings under the same; the several acts of Congress in relation thereto; and the laws and ordinances of the government from which it is alleged to have been derived; and all other questions properly arising between the claimants and the United States."

The decision of this court, if an appeal were taken, or, if not, of the court below, was to be final and conclusive. By the fifth section of the act, any claim not brought before the court within two years, or not prosecuted to final decision within three years, was barred.

May 26, 1830, (4 Stat. 405, c. 106,) an act was passed confirming the claims and titles to lands filed before the register and receiver of the land office acting as commissioners in the district of East Florida under the quantity contained in one league square, which had been recommended for confirmation, and referred to Congress January 14, 1830; "and all the remaining claims which have been presented according to law, and not finally acted upon, shall be adjudicated and finally settled upon the same conditions, restrictions, and limitations, in every respect, as are prescribed by the act of Congress approved twenty-third May, one thousand eight hundred and twenty-eight."

By the eighth section, claimants who were entitled to avail themselves of the act of May 23, 1828, or might avail themselves of the provisions of this act, by taking a quantity of land equal to a league square in lieu of the whole grant, were allowed a further time of one year from the passage of the act in which to make their relinquishments, &c.

By an act of June 22, 1860, (12 Stat. 85, c. 187,) "for the final adjustment of private land claims in the States of Florida, Louisiana and Missouri, and for other purposes," claimants of lands lying within those States by virtue of any grant, concession, order of survey, permission to settle, or other written evidence of title, emanating from any foreign government, bearing date prior to the cession to the United States, were authorized to make application for confirmation of their title to lands so claimed, and the registers and receivers of the land offices in Florida were appointed commissioners to hear and decide under such instructions as might be prescribed by the Commissioner of the General Land Office, and according to justice and equity, in a summary manner, such claims within the district aforesaid as came within the provisions of the act. The claims were to be divided into three classes, first, all claims which in their opinion ought to be confirmed where the lands claimed had been in possession and cultivation by the private claimants or those under whom they derived title for a period of at least twenty years preceding the date of the filing of the claim, by virtue of some grant, concession, order of survey or permission to survey, or other written evidence of title; second, all claims which in their opinion ought to be confirmed, where the lands were claimed under written evidence

of title, but where there had been no actual cultivation or possession for a period of twenty years; third, all claims which in their opinion ought to be rejected; that whenever the Commissioner of the General Land Office should approve the report of the commissioners in cases embraced in classes first and second, he should report the same to Congress for its action; and that whenever it should appear that the lands claimed and the title to which might be confirmed had been sold in whole or in part by the United States prior to confirmation, or where the same could not be surveyed or located, the party in whose favor the title was confirmed should have the right to enter upon any of the public lands of the United States a quantity of land equal in extent to that sold by the government.

Section 11 provided for proceedings where lands had not been possessed or cultivated for twenty years, but were claimed "by complete grant, or concession, or order of survey, duly executed, or by other mode of investiture of the title thereto in the original claimant or claimants, by separation thereof from the mass of the public domain," by petition in any District Court of the United States, within whose jurisdiction the lands or any part thereof might lie; and for an appeal from the decree to this court.

Section 12 enacted that the act should remain in force for five years, unless sooner repealed, "and all claims presented or sued upon according to the provisions of this act within the said term of five years, may be prosecuted to final determination and decision, notwithstanding the said term of five years may have expired before such final determination and decision."

The provisions of this act were extended by an act of June 10, 1872, (17 Stat. 378, c. 421,) putting it in force for a period of three years; and it was provided that all persons claiming land as specified in the first section of the act might have their claims confirmed, in all cases where it should be satisfactorily proved that the claimants, and those from whom they derived title, had "held continuous possession of the land claimed, from the date of the cession to the United States of the territory out of which" the State of Florida was formed.

Mr. Chief Justice FULLER delivered the opinion of the Court:

Appellees submitted motions to dismiss or affirm, the consideration of which was postponed to the hearing on the merits.

The contention is that the appeal should have been taken to the Circuit Court of Appeals and not to this court.

We do not concur in that view. The bill alleged "that this cause arises under the said treaty between the United States and Spain, which ratified and confirmed said grant to the said Joseph Fish, under whom your orators claim title. And the controversy involved in this cause necessarily involves the construction of said treaty."

By motions to dismiss and demurrers appellants set up various objections to the jurisdiction of the Circuit Court, the disposition of which involved the construction of the treaty. These being overruled, appellants by their answer admitted "that the controversy involves the construction of the treaty between Spain and the United States; . . . that perfect or complete grants were recognized by the treaty with Spain, but incomplete grants were ratified by the treaty, to the same extent they would have been valid had the territory remained under the King of Spain."

It was contended on the one hand that the title was absolutely confirmed by the treaty, and on the other that as this was not a suit brought under any of the acts of Congress in that behalf, the treaty could not be held to be self-executing.

The pleadings, the evidence, and the master's report and opinion considered, we think that rights under the treaty were so far set up and relied on as to give jurisdiction to the Circuit Court, and to justify an appeal from its decree directly to this court. The record differs from that in *Muse* v. *Arlington Hotel Company*, 168 U. S. 430, which fell short of affording adequate grounds for the maintenance of our jurisdiction.

This is a bill to remove clouds on title, and rests on complainants' alleged legal title, connected with possession.

The general rule is that complainants in such suits must be in actual possession. *Frost* v. *Spitley*, 121 U. S. 552. And such is the rule in Florida, where, however, it is enough if the land be wild and unoccupied, or if some independent head of equity jurisdiction exists. *Richards* v. *Morris*, 39 Fla. 205; *Hughes* v. *Hannah*, Id. 376; *Sloan* v. *Sloan*, 25 Fla. 53.

In this case actual possession was claimed of a plantation styled the Orange Grove, of about one hundred acres, situated on what was called "Fish's" Island, which the master found was not an island in itself, but part of Anastasia Island; and constructive possession of the whole of Anastasia Island, a certain part excepted as reserved. Relief was not sought as to the Orange Grove, and some homesteads, and proof was introduced tending to show that the tracts in controversy were wild and unoccupied. It was insisted as to them that the legal title drew possession to it.

The master found as matter of mixed law and fact that the lands granted to Jesse Fish in 1795 were "an island, well known and designated by name, and entirely surrounded by water," and that they were completely and sufficiently segregated from the royal domain by proceedings taken under the decree of 1795, and Fish placed thereby in possession thereof; that the grant and the segregation of the lands from the royal domain constituted "a complete and perfect title to the said lands, to wit, to the whole of the island of St. Anastasia," certain lands, "marked off by the officials as reserved," excepted.

He also found that "on August 31st, 1823, Sarah Fish presented her memorial to the board of commissioners appointed by Congress to investigate as to land claims in East Florida, claiming title to the Island of St. Anastasia under the grant to Jesse Fish in 1795, aggregating ten thousand acres of land; that on December 16th, 1825, the board of commissioners for East Florida reported to Congress the claim of Sarah Fish, heir to Anastasia Island, for ten thousand acres, as a valid claim for confirmation, and that said claim was reported to Congress by the Secretary of the Treasury of the United States for confirmation, with his report under date of February 23d, 1826."

The master ruled as matter of law "that the grant of Fish, being a valid and complete title, properly segregated from the public domain prior to January 24th, 1818, stood ratified and confirmed both by the King of Spain and the United States by virtue of the eighth article of the treaty of cession. That this grant, having been passed upon by the commissioners of East Florida under the acts of Congress and reported by them to Congress for approval as a valid grant in 1826, was further confirmed as to its validity by the United States by the act of Congress of May 23d, 1828. That the limitation in the twelfth section of the act of 1828 and the acts supplemental thereto and amendatory thereof, enacted by Congress in regard to private land claims in Florida, did not apply to complete valid grants of land properly segregated from the royal domain and in possession by the grantees prior to Jan. 24th, 1818, and therefore did and do not apply to the grant to Fish so as to bar the present action."

If then the limitations of the acts of Congress properly applied to complete and perfect titles and this was such, or if they applied to the claim of Fish because it was not such a title, or under the particular circumstances, the conclusions reached were erroneous, and the decree must be reversed.

And, apart from these limitations, if the grant did not amount to an absolute title, requiring no confirmation, the bill, of course, could not be maintained.

It must be remembered that this is not a suit under any of the acts passed by Congress in reference to the settlement of claims in East Florida, but entirely independent of them. According to the theory of appellees, those acts have no application whatever. Appellees assert their title to have been absolutely perfect and complete prior to the treaty, and, in any aspect, they must stand or fall by their contention that the Fish grant was a complete and perfect royal title.

And while we can perceive that equitable grounds may have justified the recommendation to Congress for confirmation in 1826, we cannot hold as matter of law that a grant couched in the terms of this one, and not made by the governor of East Florida or ratified by him, was an absolute conveyance of the fee.

By the Spanish law the King was the source and fountain of title to all lands, which could only be disposed of by him, or his duly authorized representative. In the Province of East Florida the governor acted in the granting of lands in the name and by the authority of the King as his direct representative. It was in that point of view that Quesada described himself as "vice royal patron and subdelegate of the royal domain." Quesada was governor from July 13, 1790, to July 20, 1796. His last participation in the matter of Fish's application was on March 26, 1795, when the papers were returned to Fish. What appears afterwards purports to have been done by one Morales during an alleged illness of the governor. There is nothing to indicate that Governor Quesada was not in the exercise of the duties of his office during his entire term, except the mere recitation in these papers. There is no evidence that Morales performed the duties of the office of governor unless the single act under consideration is to be so treated, and that would not make out a *de facto* incumbency, if there could be such, which, as to the exercise of this power, we cannot concede. There is no pretence that Morales was appointed governor *pro tempore*, and indeed he could not have been save by the King, or the captain general of Cuba and the Floridas, which appointment would have been formally made and duly recorded. 2 White's New Recopilacion, 270, 271. No evidence to that effect was introduced. Morales clearly cannot be held to have had the power to make a royal grant, nor was any ratification of what he did do shown.

In *United States* v. *Arredondo*, 6 Pet. 691, and in *United States* v. *Peralta*, 19 How. 343, it was held in view of the rules of decision prescribed by the statutes under which the courts exercised jurisdiction, that it was the intention of Congress that a claimant should not be required to offer proof as to the authority of the official executing the grant, but that the court would assume as a settled principle that a public grant was to be taken as evidence that it was issued by lawful authority. But under the act of March 3, 1891, creating the Court of Private Land Claims, inasmuch as it was made essential before a grant could be held legally valid that it must appear that the title was "lawfully and regularly derived," it was held that such presumption could not be indulged in; that the language of the act imported "that the court must be satisfied, from all the evidence, that the official body or person assuming to grant was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified." *Hayes* v. *United States*, 170 U. S. 637. The question involved in that case was whether the territorial deputation of New Mexico had authority to make the grant in controversy. Mr. Justice White, delivering the opinion, said, among other things: "Further, while it is reasonable to presume that any order or decree of the supreme executive of Mexico con-

ferring authority to alienate the territorial lands or ratifying an unauthorized grant to the extent authorized by law was made matter of official record, the petition does not aver and the grant does not recite, nor was there any evidence introduced showing a prior authorization or subsequent ratification. In fact, it was not even shown that at or about the time of the grant the territorial deputation habitually assumed to grant lands, particularly under circumstances which would justify an inference that the supreme executive was informed of such procedure."

In *Crespin* v. *United States*, 168 U. S. 208, which was a case under the act of 1891, it was held that the presumption indulged in *United States* v. *Arredondo* could not supply the want of power in the alleged granting officer.

In the case at bar, as we have said, complainants were not proceeding under any act of Congress permitting the United States to be sued, but as at common law, and on the basis of absolute legal title. That title they were obliged to make out, and could only avail themselves of such presumptions as would ordinarily obtain. Without going into the question of the presumptions which might on occasion be indulged in, it is enough to say that it is clear that where the officer who assumed to convey the public domain had no authority *ex officio* to do so, such authority cannot be presumed from the mere fact of the conveyance in the absence of other evidence.

We do not think that Governor Quesada could have delegated his power as subdelegate, and it cannot be assumed that he attempted to do so.

But, furthermore, we are not persuaded that Morales undertook to make an absolute grant in fee. He did not profess to be acting as "Vice Royal Patron and Subdelegate of the Royal Domain." The grant did not run in the name of the King; did not purport to make the grant as "in absolute property;" did not assert the legal right to make such a grant; and the terms of the paper were consistent with a grant of possession merely, or, at the most, of a concession, which required a title in form to be subsequently issued.

The report of the land commissioners of January 31, 1826, transmitting the Fish claim among others, (4 American State Papers, "Public Lands," D. G. ed., 276,) states: "A royal title is the highest order of title known by any law, usage, or principle, in the province of East Florida. Titles of this description were designed to convey the fee simple to the grantee; they were usually made by the acting governors of the province in the name of the King; they recited the grant to be 'in perpetuity,' and also the specific metes and bounds of the land. . . . This title may be said to correspond in character with that of a patent issued by our government. Concessions without condition are understood to differ from a royal title

only in this, that most of the latter recite the metes and bounds, whereas the unconditional concession, although definite in quantity and location of the land, is still subject to a survey; which, when made, was followed up by maturing the concession by a royal title. . . . There is also a peculiarity in the phraseology of a royal title; in all the grants of this nature, the legal right to grant the lands is asserted."

The commissioners regarded the grant in question as a concession without condition, or with conditions fulfilled, and reported it as such for confirmation. They attributed it to the royal order of 1790 in respect of settlers. 1 Clarke's Land Laws, 996, 994; 2 White, 276; *United States* v. *Clarke*, 8 Peters, 436.

Referring to class one, being claims to lands not exceeding 3,500 acres in quantity, they made the observations already quoted, and further said: "In deciding on the cases comprehended in this class, the board have in all cases of royal titles and concessions without condition, where the documents were found amongst the archives of the country, and no allegations on the part of the United States appearing against them, considered themselves bound to grant certificates of confirmation to the claimants." . . . "Number three comprehends claims exceeding 3,500 acres, the titles to which were found amongst the public archives of the country, and are ascertained by the commissioners to be valid Spanish grants, and reported accordingly to Congress for confirmation."

The question on this branch of the case is not whether the grant should have been confirmed, but whether it amounted to a complete title without confirmation. At the time of the cession was further action of the government required to perfect it? As it was not in itself a royal title and was neither made nor confirmed by the lawful authorities of the King, we think such action was necessary.

But were this otherwise it seems to us clear that the limitations of the acts of Congress applied.

Articles II and VIII of the treaty between the United States and Spain, concluded February 22, 1819, ratified by Spain, October 24, 1820, and by the United States February 19, 1821, read as follows:

"Article II. His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said provinces, are included in this article. The said archives and documents shall be left in possession of the commissaries or officers of the United States, duly authorized to receive them."

"Article VIII. All the grants of land made before the 24th of January, 1818, by His Catholic Majesty, or by his lawful authorities, in the said

territories ceded by His Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of His Catholic Majesty. But the owners in possession of such lands, who, by reason of the recent circumstances of the Spanish nation, and the revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same, respectively, from the date of this treaty; in default of which, the said grants shall be null and void. All grants made since the said 24th of January, 1818, when the first proposal, on the part of His Catholic Majesty, for the cession of the Floridas, was made, are hereby declared, and agreed to be, null and void."

In the light of the Spanish text, to the effect that grants should "remain ratified and confirmed," the treaty has been frequently construed as meaning that grants needing no confirmation should stand confirmed, while those requiring confirmation should receive it in due course as might be provided.

Undoubtedly private rights of property to land lying within the territory ceded were entitled to protection, whether they were complete and absolute titles, or merely equitable interests needing some further act of government to perfect the legal title. The duty of securing such rights belonged to the political department, and might be discharged by Congress itself, or through the instrumentality of boards, or of strictly judicial tribunals. And even grants which were complete at the time of the cession might be required by Congress to have their genuineness and their extent established by proceedings in a particular manner before they could be held valid. *Ainsa* v. *Railroad Company*, 175 U. S. 76; *Botiller* v. *Dominguez*, 130 U. S. 238; *United States* v. *Clarke*, 8 Peters, 436; *Glenn* v. *United States*, 13 How. 250.

In *United States* v. *Clarke*, the acts of Congress prior to 1834 were considered by Chief Justice Marshall, in the instance of a complete and perfect grant. Referring to the act of May 26, 1830, the Chief Justice said: "It was obviously the intention of Congress to extend the jurisdiction of the court to all existing claims and to have them finally settled. The purposes for which the act was made cannot be otherwise accomplished. . . . The words which confer jurisdiction, and describe the cases on which it may be exercised, are 'all the remaining cases which have been presented according to law, and not finally acted upon.' The subsequent words 'shall be adjudicated,' &c., prescribe the rule by which the jurisdiction previously given shall be exercised." Quoting from the sixth section of the act of May 8, 1822, he said: "The object of this law cannot be doubted. It was to separate private property from the public domain for the double purpose of doing justice to individuals, and enabling Congress safely to sell the vacant lands in their newly acquired territories.

To accomplish this object, it was necessary that all claims of every description, should be brought before the commissioners, and that their powers of inquiry should extend to all. Not only has this been done, but, further to stimulate the claimants, the act declares 'that any claim not filed previous to the 31st of May, 1823, shall be deemed and held to be void and of none effect.' This primary intention of Congress is best promoted by determining causes finally, where their substantial merits can be discerned." He further quoted the sixth section of the act of May 23, 1828, and from the act of May 26, 1824, (referred to in the act of May 26, 1830,) and as to the latter act said that it "does not define the jurisdiction conferred on the court of East Florida by the act of 1830, but directs the mode of proceeding and the rules of decision."

In *Glenn* v. *United States*, Mr. Justice Catron, referring to the case of Arredondo, said: "That proceeding was founded on a perfect title, having every sanction the Spanish government could confer. It was brought before the courts according to the sixth section of the act of May 23, 1828, which embraced perfect titles, and was only applicable to suits in Florida."

The cases of *United States* v. *Arredondo*, 6 Pet. 691; *United States* v. *Percheman*, 7 Pet. 57; *United States* v. *Clarke*, 8 Pet. 436, were all instances of complete and perfect titles brought into court under these statutes.

Botiller v. *Dominguez* was a writ of error to the Supreme Court of California to review a judgment in favor of plaintiff in an action in the nature of ejectment. Plaintiff's title was a grant alleged to have been made by Mexico, but no claim under the grant had ever been presented for confirmation to the board of land commissioners appointed under the act of Congress of March 3, 1851, (9 Stat. 631); and no patent had ever issued from the United States to any one for the land or any part of it. The State court held that the title to the land by the Mexican grant was perfect at the time California was acquired, and that the grantee was not compelled to submit the same for confirmation to the board of commissioners. This court ruled that no title to lands in California dependent upon Spanish or Mexican grants could be of any validity which had not been submitted to and confirmed by the board provided for that purpose by the act of Congress, or, if rejected by that board, confirmed by the District Court or by the Supreme Court of the United States. Two propositions were urged in support of the decision of the State court. First, that the statute itself was invalid because in conflict with the treaty with Mexico, and also with rights of property under the Constitution and laws of the United States. Second, that the statute was not intended to apply to claims which were supported by complete and perfect title from the Mexican government, but only to such as were imperfect, inchoate and equitable in their character. As to the first of these propositions, this court held that so far as the act of

Congress was alleged to be in conflict with the treaty with Mexico, that was a matter in which the court was bound to follow the statutory enactments of its own government. As to the second point, it was held that the statute applied to perfect as well as imperfect claims, and Mr. Justice Miller, delivering the opinion, said:

"It was equally important to the object which the United States had in the passage of it, that claims under perfect grants from the Mexican government should be established as that imperfect claims should be established or rejected. The superior force which is attached, in the argument of counsel, to a perfect grant from the Mexican government had its just influence in the board of commissioners, or in the courts to which their decisions could be carried by appeal. If the title was perfect, it would there be decided by a court of competent jurisdiction, holding that the claim thus presented was valid; if it was not, then it was the right and the duty of that court to determine whether it was such a claim as the United States was bound to respect, even though it was not perfect as to all the forms and proceedings under which it was derived. So that the superior value of a perfected Mexican claim had the same influence in a court of justice which is now set up for it in an action where the title is contested. Nor can it be said that there is anything unjust or oppressive in requiring the owner of a valid claim, in that vast wilderness of lands unclaimed, and unjustly claimed, to present his demand to a tribunal possessing all the elements of judicial functions, with a guarantee of judicial proceedings, so that his title could be established if it was found to be valid, or rejected if it was invalid. We are unable to see any injustice, any want of constitutional power, or any violation of the treaty, in the means by which the United States undertook to separate the lands in which it held the proprietary interest from those which belonged, either equitably or by a strict legal title, to private persons. Every person owning land or other property is at all times liable to be called into a court of justice to contest his title to it. This may be done by another individual, or by the government under which he lives. It is a necessary part of a free government, in which all are equally subject to the laws, that whosoever asserts rights or exercises powers over property may be called before the proper tribunals to sustain them."

We are of opinion that these acts applied and were intended to apply to all claims, whether perfect or imperfect, in that particular resembling the California act; that the courts were bound to accept their provisions; and that there was no want of constitutional power in prescribing reasonable limitations operating to bar claims if the course pointed out were not pursued.

Mrs. Fish naturally took that view and memorialized the commissioners, who reported in favor of the claim, and the report was transmitted to Congress in February, 1826.

The act of May 23, 1828, followed, which confirmed all claims, which had been recommended for confirmation, of which this was one, to the extent of a league square, but provided that the confirmation should not

be effectual until all the parties in interest in the original grant had file
a full and final release of all claims to the residue contained in it, wit
the register and receiver of the district where the grant was situated. W
do not agree with the master that the effect of this was to confirm th
entire grant, but, on the contrary, we think that by the action of Congre
all of the claim except a league square was rejected, and that as there w
no release of the excess, the condition of the confirmation failed.

And inasmuch as this was the situation, and claimants had neithe
accepted the league square nor availed themselves of the legislation pr
viding for resort to the courts, it was held when the matter was litigate
in the Land Department that the claim was barred. The views the
entertained were expressed by the Commissioner in his report of Augu
2, 1890, and by the Secretary of the Interior in his decision of Jun
22, 1893. 16 Land Dec. 550. The Land Department was of opinion th
even conceding that the claim was a valid grant from the Spanis
government for the full quantity of 10,000 acres, and that the act
May 23, 1828, which governed that, among other claims, was in viol
tion of the obligations of the treaty, the department and the courts we
bound to follow the statutory enactments of their own government, an
must be controlled thereby, and that regarding the claim as coming with
the provisions of the acts of 1827 and 1828, its validity could not
recognized because the claimants had failed to comply with the conditio
prescribed by these acts. All claims of every description whatever, whethe
arising under patents, grants, concessions or orders of survey, were require
to be submitted to the board of commissioners for confirmation, or to
submitted to Congress for final action, before their validity could
recognized, and all claims reported upon by the commissioners, whethe
founded upon a complete or an incomplete title, were subject to the pr
visions of the act of Congress of May 23, 1828, and barred in accordan
with its provisions. If the claim came within the provisions of the secon
section of that act, its validity was recognized only to the extent of o
league square, and upon the condition that the claimant should relinqui
all in excess of that quantity on or before May 26, 1831. If it did n
come within the provisions of said section, then it was a claim not acte
upon by Congress, and was barred by failure to commence the proper pr
ceedings in the courts within the time limited in the sixth section of th
act of May 23, 1828.

We accept these conclusions, and with the less reluctance as, if this we
a perfect title as contended, resort to the courts might again have been ha
under the acts of 1860 and 1872.

It seems to us that the government was unquestionably entitled
demand the seasonable assertion of such claims as this, and that years aft
the public surveys had been extended over the land, and the maps and pla

thereof approved; many reservations made for public purposes; patents issued; homestead entries made and final certificates issued, the exhibition of a bill to set aside the patents of the government by those who had failed to comply with the statutes came undeniably too late.

In our judgment the bill cannot be maintained because complainants failed to show complete legal title from the King; and because the claim was barred by the statutes to which we have referred.

Decree reversed and cause remanded with a direction to dismiss the bill.

Mr. Justice SHIRAS and Mr. Justice PECKHAM dissented.

True copy.

Test:

Clerk Supreme Court, U. S.

END OF CASE